



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 17, 2004*

APPOINTMENTS TO LIBRARY COMMISSION AND THE PARKS AND RECREATION COMMISSION

RECOMMENDED ACTION(S):

1. **Direct** staff to schedule interviews to fill vacancies to the Library Commission
2. **Direct** staff to extend the recruitment period for the Parks & Recreation Commission and to schedule interviews to fill vacancies to said Commission.
3. **Interview** Marilyn Librers to fill a vacancy on the Parks & Recreation Commission.

EXECUTIVE SUMMARY:

At the Council's March 3, 2004 meeting, staff informed the Council that the City did not receive enough applications to fill upcoming vacancies to serve on the Library and Parks & Recreation Commissions. The Council directed staff to return with the applications of the three (3) individuals interested in serving on the Library Commission for appointment. Staff omitted to inform the Council that applications for the Library Commission were requested to be submitted to the City Clerk's office no later than Friday March 5, 2004, or until the vacancies were filled. Staff received three (3) additional applications by the March 5 filing date. The City is now in receipt of six (6) applications to fill 3-5 vacancies on the Library Commission, depending on whether the Council wishes to appoint a 7-member or a 9-member Library Commission. Staff recommends that the Council schedule interviews to fill vacancies in April. Scheduling interviews in April will give Council Member Tate the opportunity to participate in the interview and appointment process. The Council/Redevelopment Agency is scheduled to meet on April 7, April 21 and April 28. Scheduled for the April 7 and the April 21 meetings are 5:00 p.m. workshops relating to Royal Court Apartments/Residential Densities and Walnut Grove PUD. The Council could consider holding a special meeting on April 14 at 6:00 p.m. to conduct the interviews.

There are four (4) Parks & Recreation Commission vacancies to take place on April 1, 2004. Staff has received applications from three (3) Parks & Recreation Commission incumbents interested in reappointment and one additional application from a Morgan Hill resident. This applicant has also submitted an application to serve on the Library Commission and Bicycle & Trails Advisory Committee. Staff has contacted this citizen to ascertain his preference in appointment. The applicant has indicated his preference in being appointed to serve on the Library Commission.

Staff has been advised by one of the incumbent applicants to the Parks & Recreation Commission, Marilyn Librers, that she is scheduled for surgery in March with an 8-10 week recuperation period. Staff recommends that the Council interview Ms. Librers at the March 17 meeting, deferring any appointment until the Council concludes its interviews of all applicants. The Council can consider interviewing the remainder of the applicants on April 12, 2004. Staff will continue with recruitment efforts to fill vacancies on the Parks & Recreation meeting, inviting eligible applicants to interview for this Commission.

FISCAL IMPACT: The time necessary to prepare this staff report has been incorporated in the Council Services & Records Management budget.

Agenda Item # A-1

Prepared/Approved
By:

Council Services &
Records Manager

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2004

FEBRUARY 2004 FINANCE & INVESTMENT REPORT

RECOMMENDED ACTION:

Accept and File Report

EXECUTIVE SUMMARY:

Attached is the monthly Finance and Investment Report for the period ended February 29, 2004. The report covers the first eight months of activity for the 2003/2004 fiscal year. A summary of the report is included on the first page for the City Council's benefit.

The monthly Finance and Investment Report is presented to the City Council and our Citizens as part of our ongoing commitment to improve and maintain public trust through communication of our finances, budget and investments. The report also serves to provide the information necessary to determine the adequacy/stability of financial projections and develop equitable resource/revenue allocation procedures.

This report covers all fiscal activity in the City, including the Redevelopment Agency. The Redevelopment Agency receives a separate report for the fiscal activity of the Agency at the meeting of the Agency. Presenting this report is consistent with the goal of *Maintaining and Enhancing the Financial Viability of the City*.

FISCAL IMPACT: as presented

Agenda Item # 1

Prepared By:

**Assistant Finance
Director**

Submitted By:

City Manager

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
February 29, 2004 – 67% Year Complete



CITY OF MORGAN HILL

Prepared by:
FINANCE DEPARTMENT



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2003/04
FOR THE MONTH OF FEBRUARY 2004 - 67% OF YEAR COMPLETE

This analysis of the status of the City's financial situation reflects 67% of the year.

- * **General Fund** - The revenues received in the General Fund were approximately 59% of the budgeted revenues. Property related taxes received by the City amounted to 73% of the budget. The amount of Sales Tax collected was 62% of the sales tax revenue budget and was 12% less than the amount collected for the same period last year. Business license and other permit collections were 87% of the budgeted amount, a 1% increase over the same period last year. Business license renewal fees are due in July; therefore the higher percent of budget collected early in the year is normal. Motor Vehicle-in-Lieu revenues were only \$885,429, or 43% of the budgeted amount, which was 36% less than the amount received at this time last year. This drop in Motor Vehicle-in-Lieu fees was caused by the State's elimination of the "State backfill" for these fees for at least a three month period, resulting in much lower fees received by the City. A somewhat higher level of Motor Vehicle-in-Lieu fees should be received by the City over the rest of the fiscal year. As of this date, the State's fiscal crisis continues to make this process complicated and problematic. Interest & Other Revenue were 57% of budget and reflect interest earnings only through December, since earnings for the quarter ending March will be posted following the end of the third quarter in April. Certain current year revenues have not yet been received this early in the year. Most gas & electric franchise fees and cable TV franchise fees will not be received by the City until later in the year.
- * The General Fund expenditures and encumbrances to date totaled 63% of the budgeted appropriations. The outstanding encumbrances in several activities are encumbrances for projects started but not completed in the prior year and carried forward to the current fiscal year.
- * **Transient Occupancy (Hotel) Tax** - The TOT rate is 10%. The City receives transient occupancy taxes on a quarterly basis. Taxes for the first two quarters of the current year amounted to \$468,456, or 53% of budget, which was .3% less than the prior year.
- * **Community Development** - Revenues were 81% of budget, which was 20% more than the amount collected in the like period for the prior year. Planning expenditures plus encumbrances were 86% of budget; Building has expended or encumbered 57% of budget and Engineering 64%. Community Development has expended or encumbered a combined total of 70% of the 2003/04 budget, including \$433,088 in encumbrances. If encumbrances were excluded, Community Development would have spent only 56% of the combined budget.
- * **RDA and Housing** - Property tax increment revenues amounting to \$11,040,614 have been received as of February 29, 2004. Expenditures plus encumbrances totaled 62% of budget. If encumbrances totaling \$7,710,719 were excluded, the RDA would have spent only 44% of the combined budget. In July, the RDA spent \$3.4 million toward the Courthouse Project acquisition. In August, the Agency made a \$2.55 million installment payment toward the purchase of the Sports Fields Complex property. In July, the Agency made a \$3 million loan to South County Housing for the Royal Court Housing. Through February 29, 2004, \$5.0 million in costs had been incurred associated with the construction of the Aquatics Complex Project.
- * **Water and Sewer Operations**- Water Operations revenues, including service fees, were 86% of budget. Expenditures totaled 58% of appropriations. Sewer Operations revenues, including service fees, were 84% of budget. Expenditures for sewer operations were 52% of budget.



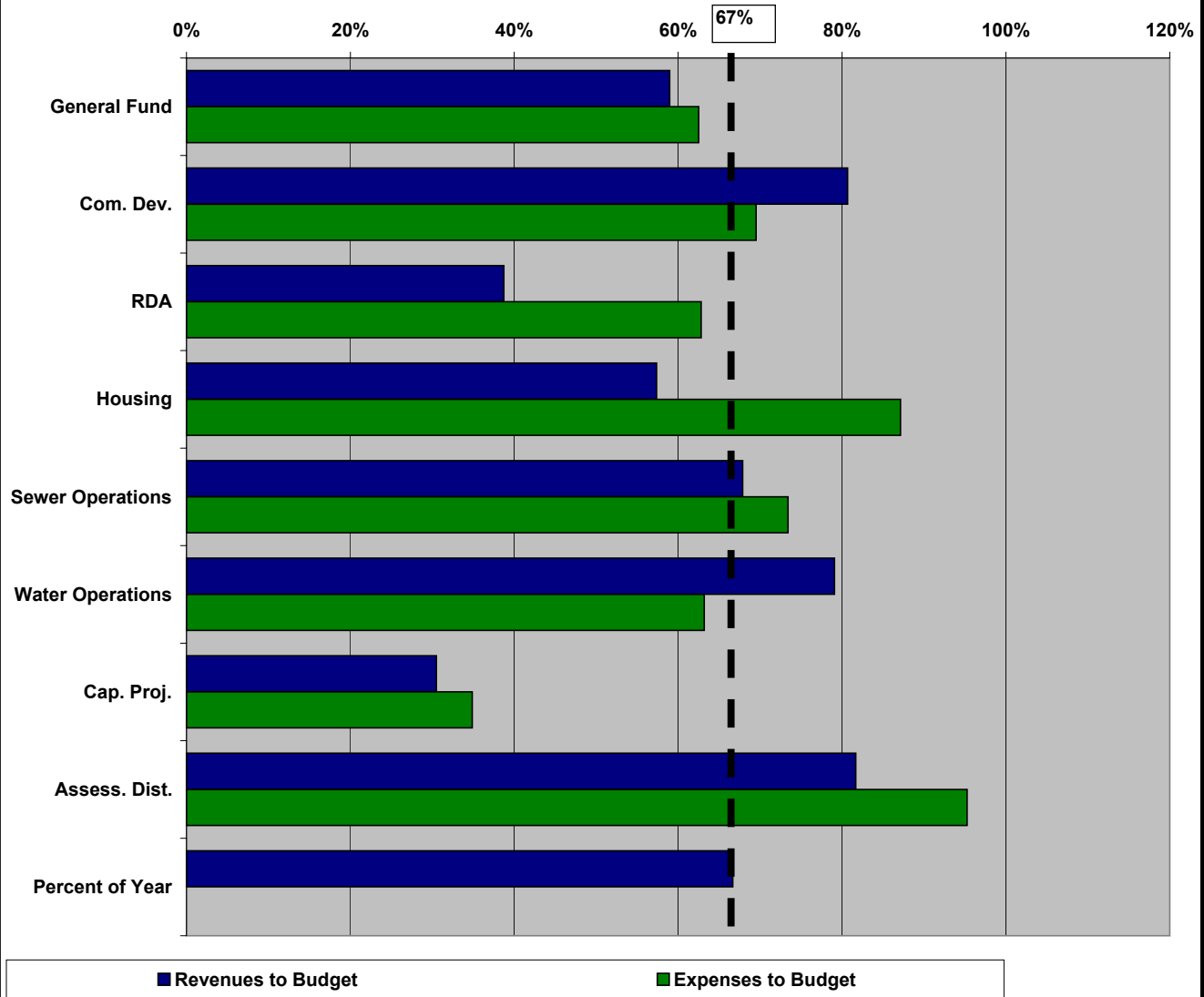
CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2003/04
FOR THE MONTH OF FEBRUARY 2004 - 67% OF YEAR COMPLETE

- * **Investments maturing/called/sold during this period.** - During the month of February, \$4.96 million of the City's Federal agency investments was called. Further details of all City investments are contained on pages 6-8 of this report.



Morgan Hill YTD Revenue & Expense Summary

February 29, 2004 – 67% Year Complete



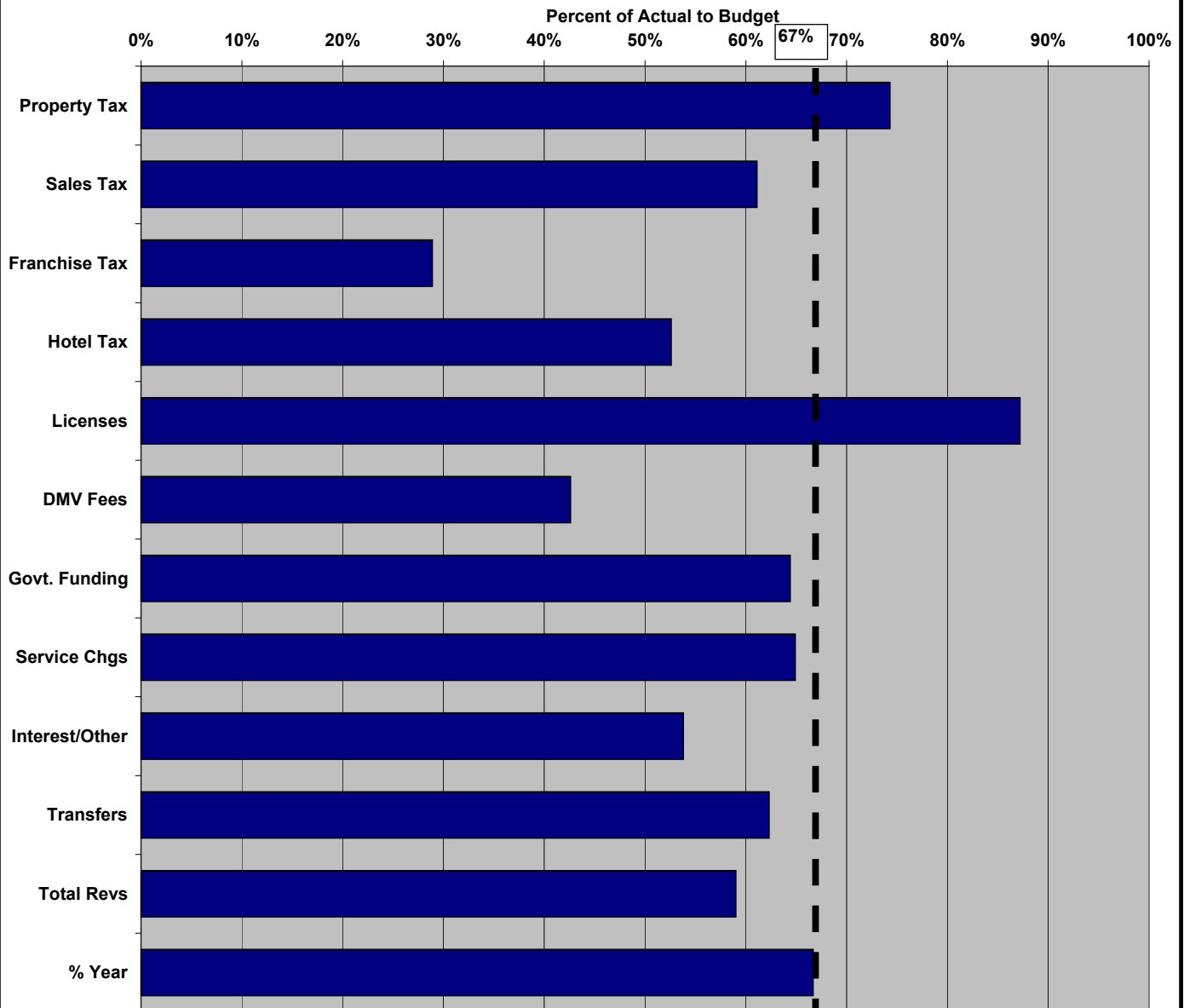
FUND NAME	REVENUES		EXPENSES		2/29/2004 UNRESTRICTED FUND BALANCE
	ACTUAL	% OF BUDGET	ACTUAL plus ENCUMBRANCES	% OF BUDGET	
General Fund	\$9,477,692	59%	\$10,370,196	63%	\$10,244,001
Community Development	1,857,251	81%	2,259,744	70%	1,149,237
RDA	9,116,159	39%	25,665,632	63%	2,040,502
Housing/CDBG	2,290,584	57%	4,341,279	87%	4,397,007
Sewer Operations	3,724,357	68%	5,516,358	73%	3,243,176
Sewer Other	1,940,567	156%	1,192,786	22%	12,096,215
Water Operations	5,593,748	79%	5,033,902	63%	3,138,931
Water Other	1,398,511	129%	3,386,745	52%	2,621,792
Other Special Revenues ¹	499,148	61%	1,121,844	43%	2,422,434
Capital Projects & Streets Funds	4,124,854	30%	7,870,835	35%	21,312,088
Debt Service Funds	128,767	82%	225,167	95%	411,979
Internal Service	2,417,877	59%	2,509,415	62%	4,500,448
Agency	2,495,304	93%	4,584,520	176%	3,111,502
TOTAL FOR ALL FUNDS	\$45,064,819	55%	\$74,078,423	57%	\$70,689,312

¹ Includes all Special Revenue Funds except Community Development, CDBG, and Street Funds



Morgan Hill YTD General Fund Revenues

February 29, 2004 – 67% Year Complete

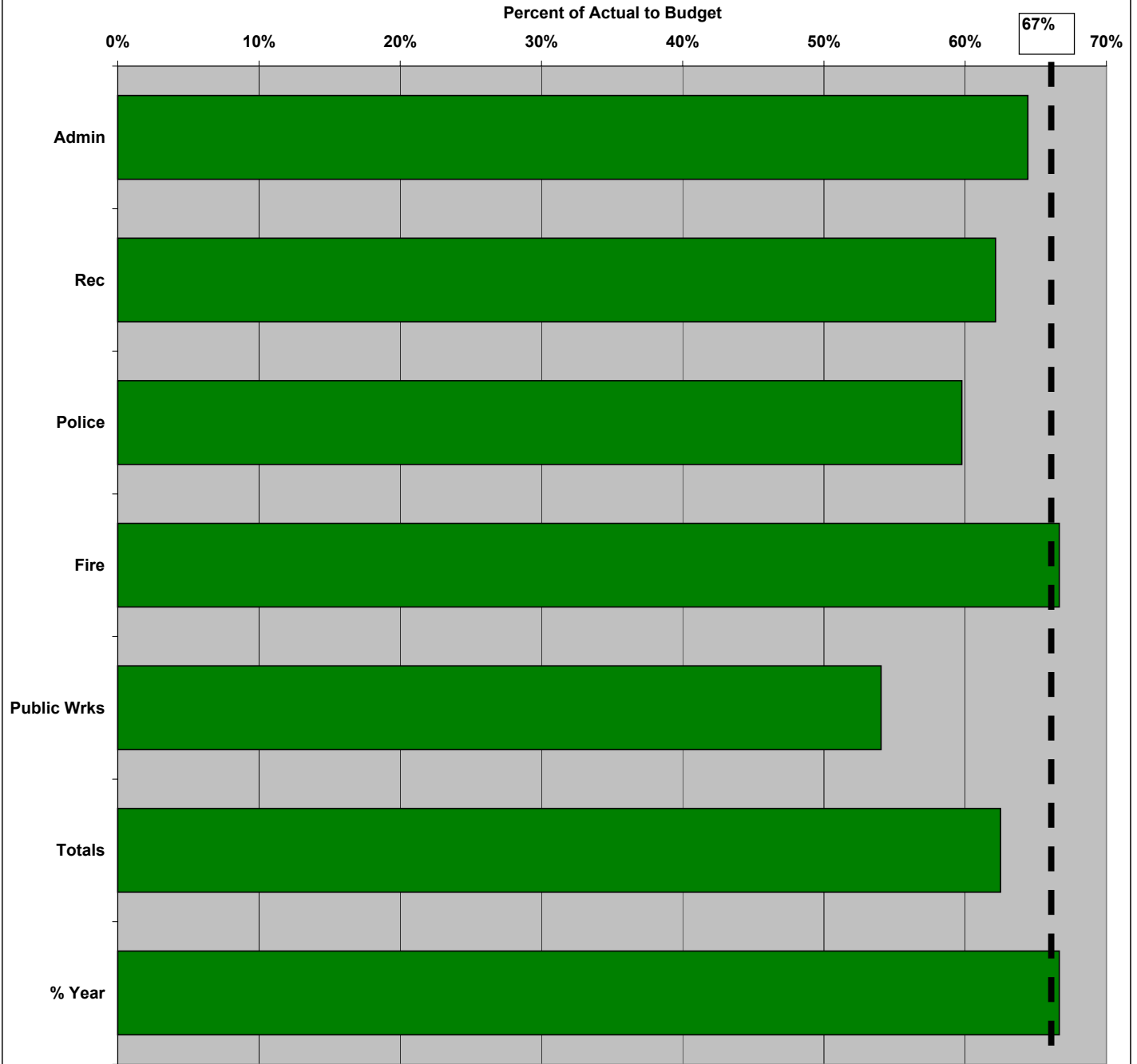


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
PROPERTY RELATED TAXES	\$2,440,000	\$1,813,484	74%	\$1,596,034	14%
SALES TAXES	\$4,923,000	\$3,008,504	61%	\$3,399,959	-12%
FRANCHISE FEE	\$961,180	\$277,386	29%	\$306,641	-10%
HOTEL TAX	\$890,000	\$468,456	53%	\$469,711	
LICENSES/PERMITS	\$202,600	\$176,612	87%	\$174,969	1%
MOTOR VEHICLE IN LIEU	\$2,080,000	\$885,429	43%	\$1,374,654	-36%
FUNDING - OTHER GOVERNMENTS	\$271,900	\$175,031	64%	\$61,503	185%
CHARGES CURRENT SERVICES	\$2,588,137	\$1,678,761	65%	\$1,468,470	14%
INTEREST & OTHER REVENUE	\$893,050	\$480,696	54%	\$373,272	29%
TRANSFERS IN	\$823,986	\$513,333	62%	\$600,222	-14%
TOTALS	\$16,073,853	\$9,477,692	59%	\$9,825,435	-4%



Morgan Hill YTD General Fund Expenditures

February 29, 2004 – 67% Year Complete



Expenditure Category	Budget	Actual Plus Encumbrances	% of Budget
ADMINISTRATION	3,279,302	2,157,397	64%
RECREATION	1,931,348	1,200,257	62%
POLICE	6,812,300	4,071,163	60%
FIRE	3,745,220	2,496,651	67%
PUBLIC WORKS	822,840	444,728	54%
TOTALS	\$ 16,591,844	\$ 10,370,196	63%



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2003/04
For the Month of February 2004
67% of Year Completed

Fund No.	Fund	Fund Balance 06-30-03	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance		Cash and Investments	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved	Unrestricted	Restricted ²
010	GENERAL FUND	\$11,136,505	\$9,477,692	59%	\$9,948,265	60%	(\$470,573)	\$421,931	\$10,244,001	\$10,957,998	\$4,150
TOTAL GENERAL FUND		\$11,136,505	\$9,477,692	59%	\$9,948,265	60%	(\$470,573)	\$421,931	\$10,244,001	\$10,957,998	\$4,150
202	STREET MAINTENANCE	\$1,683,131	\$966,333	71%	\$1,412,970	49%	(\$446,637)	\$863,269	\$373,225	\$1,043,504	
204/205	PUBLIC SAFETY/SUPPL. LAW	\$485,350	\$104,295	94%	\$182,388	67%	(\$78,093)		\$407,257	\$407,258	
206	COMMUNITY DEVELOPMENT	\$1,551,730	\$1,857,251	81%	\$1,826,656	56%	\$30,595	\$433,088	\$1,149,237	\$1,619,065	
207	GENERAL PLAN UPDATE	\$190,845	\$66,164	87%	\$48,025	24%	\$18,139	\$93,405	\$115,579	\$209,073	
210	COMMUNITY CENTER	\$360,157	\$2,751	44%	\$208,000	67%	(\$205,249)		\$154,908	\$154,908	
215 / 216	CDBG	\$636,136	\$6,622	4%	\$91,971	20%	(\$85,349)	\$48,758	\$2,029	\$151,512	
220	MUSEUM RENTAL	\$1,274	\$8	20%	\$1,301	54%	(\$1,293)		(\$19)	(\$19)	
225	ASSET SEIZURE	\$38,096	\$359	62%		n/a	\$359		\$38,455	\$38,455	
229	LIGHTING AND LANDSCAPE	\$33,766	\$68,917	54%	\$106,627	64%	(\$37,710)	\$28,929	(\$32,873)	(\$3,655)	
232	ENVIRONMENT PROGRAMS	\$613,697	\$203,671	53%	\$230,267	46%	(\$26,596)	\$71,438	\$515,663	\$589,636	
234	MOBILE HOME PK RENT STAB.	\$9,808	\$5,044	9%	\$73,752	82%	(\$68,708)	\$39,054	(\$97,954)	(\$58,899)	
235	SENIOR HOUSING	\$255,610	\$2,407	35%	\$4,300	30%	(\$1,893)		\$253,717	\$253,717	
236	HOUSING MITIGATION	\$1,043,306	\$24,857	89%	8,489	1%	\$16,368	6,511	\$1,053,163	\$1,059,674	
240	EMPLOYEE ASSISTANCE	\$8,921	\$20,675	103%	15,058	75%	\$5,617		\$14,538	\$11,929	
TOTAL SPECIAL REVENUE FUNDS		\$6,911,827	\$3,329,354	72%	\$4,209,804	46%	(\$880,450)	\$2,084,452	\$3,946,925	\$5,476,158	
301	PARK DEV. IMPACT FUND	\$3,191,630	\$616,237	142%	\$261,447	12%	\$354,790	\$128,875	\$3,417,545		\$3,546,419
302	PARK MAINTENANCE	\$2,909,243	\$180,258	70%	\$100,000	50%	\$80,258		\$2,989,501	\$2,989,501	
303	LOCAL DRAINAGE	\$2,910,954	\$119,518	41%	\$8,987	0%	\$110,531		\$3,021,485		\$3,021,485
304	LOCAL DRAINAGE/NON-AB1600	\$3,276,514	\$104,115	66%	\$60,036	27%	\$44,079	\$39,224	\$3,281,369	\$3,200,594	
305	OFF-STREET PARKING	\$4,020	\$38	40%			\$38		\$4,058	\$4,058	
306	OPEN SPACE	\$458,488	\$107,129	187%			\$107,129	\$10,000	\$555,617	\$565,617	
309	TRAFFIC IMPACT FUND	\$2,826,115	\$1,024,251	155%	\$479,679	24%	\$544,572	\$542,246	\$2,828,441		\$3,356,494
311	POLICE IMPACT FUND	\$1,183,045	\$54,311	105%	\$23,364	2%	\$30,947	\$10,000	\$1,203,992		\$1,213,993
313	FIRE IMPACT FUND	\$2,603,859	\$162,262	110%	\$519,501	94%	(\$357,239)	\$9,101	\$2,237,519		\$2,246,620
317	REDEVELOPMENT AGENCY	\$20,860,548	\$9,116,159	39%	\$18,024,165	44%	(\$8,908,006)	\$9,912,040	\$2,040,502	\$8,209,755	
327 / 328	HOUSING	\$24,240,428	\$2,283,962	60%	\$4,079,893	43%	(\$1,795,931)	\$18,049,519	\$4,394,978	\$4,469,777	
340	MORGAN HILL BUS.RANCH I	\$48,290	\$455	40%			\$455		\$48,745	\$48,745	
342	MORGAN HILL BUS.RANCH II	\$54,233	511	n/a			\$511		\$54,744	\$54,744	
346	PUBLIC FACILITIES NON-AB1600	\$1,332,714	\$242,192	2%	390,803		(\$148,611)	\$1,825,726	(\$641,623)	\$996,602	
347	PUBLIC FACILITIES IMPACT FUND	\$665,032	\$457,392	293%	\$135,629	14%	\$321,763	\$86,901	\$399,894		\$950,125
348	LIBRARY IMPACT FUND	\$414,456	\$50,402	164%	\$150	67%	\$50,252		\$464,708		\$464,708
350	UNDERGROUNDING	\$1,257,217	35,381	112%	\$98,845	52%	(\$63,464)	\$124,954	\$1,068,799	\$1,193,753	
360	COMM/REC CTR IMPACT FUND		4,069	112%		52%	\$4,069		\$4,069	\$4,069	
TOTAL CAPITAL PROJECT FUNDS		\$68,236,786	\$14,558,642	37%	\$24,182,499	35%	(\$9,623,857)	\$31,238,586	\$27,374,343	\$21,737,215	\$14,799,844
527	HIDDEN CREEK			n/a							
533	DUNNE/CONDIT			n/a							
536	ENCINO HILLS	\$68,027	\$640	39%			\$640		\$68,667	\$68,667	
539	MORGAN HILL BUS. PARK	\$11,867	\$111	25%			\$111		\$11,978	\$11,977	
542	SUTTER BUSINESS PARK	\$24,910	\$235	32%			\$235		\$25,145	\$25,145	
545	COCHRANE BUSINESS PARK	\$374,418	\$109,906	92%	\$192,695	98%	(\$82,789)		\$291,629	\$110,679	\$180,950
551	JOLEEN WAY	\$29,157	\$17,875	51%	\$32,472	80%	(\$14,597)		\$14,560	(\$2,689)	\$17,250
TOTAL DEBT SERVICE FUNDS		\$508,379	\$128,767	82%	\$225,167	95%	(\$96,400)		\$411,979	\$213,779	\$198,200



City of Morgan Hill
Fund Activity Summary - Fiscal Year 2003/04
For the Month of February 2004
67% of Year Completed

Fund No.	Fund	Fund Balance 06-30-03	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance		Cash and Investments	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved	Unrestricted	Restricted ²
640	SEWER OPERATIONS	\$16,004,091	\$3,724,357	68%	\$5,433,460	72%	(\$1,709,103)	\$11,051,812	\$3,243,176	\$2,798,686	\$1,893,333
641	SEWER IMPACT FUND	\$7,772,110	\$1,627,491	260%	\$273,579	7%	\$1,353,912	3,243,313	\$5,882,709		\$6,040,618
642	SEWER RATE STABILIZATION	\$3,804,228	\$35,859	40%	\$1,579	67%	\$34,280		\$3,838,507	\$3,838,507	
643	SEWER-CAPITAL PROJECTS	\$9,683,556	\$277,217	53%	\$447,382	28%	(\$170,165)	7,138,392	\$2,374,999	\$2,808,455	
650	WATER OPERATIONS	\$21,476,576	\$5,593,748	79%	\$4,396,828	10%	\$1,196,920	\$19,534,566	\$3,138,931	\$3,045,249	\$390,251
651	WATER IMPACT FUND	\$3,271,280	\$834,191	126%	\$800,721	30%	\$33,470	3,955,346	(\$650,597)		(\$81,412)
652	WATER RATE STABILIZATION	\$867,428	\$6,423	31%	\$567,034	67%	(\$560,611)		\$306,817	\$306,817	
653	WATER -CAPITAL PROJECT	\$9,092,130	\$557,897	139%	\$675,548	23%	(\$117,651)	6,008,907	\$2,965,572	\$3,739,830	
TOTAL ENTERPRISE FUNDS		\$71,971,399	\$12,657,183	85%	\$12,596,131	46%	\$61,052	\$50,932,336	\$21,100,114	\$16,537,544	\$8,242,790
730	DATA PROCESSING	\$436,026	\$163,507	67%	\$141,280	54%	\$22,227	128,813	\$329,440	\$406,192	
740	BUILDING MAINTENANCE	\$400,151	\$595,480	67%	\$262,471	39%	\$333,009	29,198	\$703,962	\$745,282	
745	CIP ADMINISTRATION	\$59,437	\$738,149	51%	\$826,031	53%	(\$87,882)	120,165	(\$148,610)	\$13,199	
760	UNEMPLOYMENT INS.	\$47,278	\$7,363	25%	\$28,318	94%	(\$20,955)		\$26,323	\$26,323	
770	WORKER'S COMP.	\$6,147	\$304,234	44%	\$518,982	70%	(\$214,748)	25,274	(\$233,875)	\$344,019	\$40,000
790	EQUIPMENT REPLACEMENT	\$3,379,971	\$178,972	67%	\$43,171	17%	\$135,801	554,033	\$2,961,739	\$2,961,739	
793	CORPORATION YARD	\$264,851	\$172,597	108%	\$61,090	36%	\$111,507	308,348	\$68,010	\$135,895	
795	GEN'L LIABILITY INS.	\$856,668	\$257,575	66%	\$320,784	86%	(\$63,209)		\$793,459	\$1,119,275	
TOTAL INTERNAL SERVICE FUNDS		\$5,450,529	\$2,417,877	59%	\$2,202,127	54%	\$215,750		\$4,500,448	\$5,751,924	\$40,000
820	SPECIAL DEPOSITS									\$767,876	
841	M.H. BUS.RANCH A.D.	\$1,649,856	\$379,755	52%	\$2,008,350	278%	(\$1,628,595)		\$21,261	\$21,260	
842	M.H. BUS. RANCH II A.D.	\$107,240	\$36,175	97%	\$139,980	360%	(\$103,805)		\$3,435	\$3,434	
843	M.H. BUS. RANCH 1998	\$1,492,569	\$416,804	82%	\$870,768	100%	(\$453,964)		\$1,038,605	\$154,365	\$884,240
844	MH RANCH RSMNT 2004A		\$1,117,583		\$589,424	n/a	\$528,159		\$528,159	\$1,035	
845	MADRONE BP-TAX EXEMPT	\$1,312,253	\$397,751		\$806,318	101%	(\$408,567)		\$903,686	\$106,019	\$797,668
846	MADRONE BP-TAXABLE	\$256,944	\$83,500	93%	\$169,680	98%	(\$86,180)		\$170,763	\$16,758	\$154,007
848	TENNANT AVE.BUS.PK A.D.	\$360,919	\$63,534	82%		na	\$63,534		\$424,453	\$424,452	
881	POLICE DONATION TRUST FUND	\$20,938	\$202	82%			\$202		\$21,140		\$21,140
TOTAL AGENCY FUNDS		\$5,200,719	\$2,495,304	93%	\$4,584,520	176%	(\$2,089,216)		\$3,111,502	\$1,495,199	\$1,857,055
SUMMARY BY FUND TYPE											
GENERAL FUND GROUP		\$11,136,505	\$9,477,692	59%	\$9,948,265	60%	(\$470,573)	\$421,931	\$10,244,001	\$10,957,998	\$4,150
SPECIAL REVENUE GROUP		\$6,911,827	\$3,329,354	72%	\$4,209,804	46%	(\$880,450)	\$2,084,452	\$3,946,925	\$5,476,158	
DEBT SERVICE GROUP		\$508,379	\$128,767	82%	\$225,167	95%	(\$96,400)		\$411,979	\$213,779	\$198,200
CAPITAL PROJECTS GROUP		\$68,236,786	\$14,558,642	37%	\$24,182,499	35%	(\$9,623,857)	\$31,238,586	\$27,374,343	\$21,737,215	\$14,799,844
ENTERPRISE GROUP		\$71,971,399	\$12,657,183	85%	\$12,596,131	46%	\$61,052	\$50,932,336	\$21,100,114	\$16,537,544	\$8,242,790
INTERNAL SERVICE GROUP		\$5,450,529	\$2,417,877	59%	\$2,202,127	54%	\$215,750		\$4,500,448	\$5,751,924	\$40,000
AGENCY GROUP		\$5,200,719	\$2,495,304	93%	\$4,584,520	176%	(\$2,089,216)		\$3,111,502	\$1,495,199	\$1,857,055
TOTAL ALL GROUPS		\$169,416,144	\$45,064,819	55%	\$57,948,513	45%	(\$12,883,694)	\$84,677,305	\$70,689,312	\$62,169,817	\$25,142,039
TOTAL CASH AND INVESTMENTS										\$87,311,856	

For Enterprise Funds - Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2003/04
For the Month of February 2004
67% of Year Completed

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% OF BUDGET
010 GENERAL FUND							
<u>TAXES</u>							
Property Taxes - Secured/Unsecured/Prio	1,972,200	1,972,200	1,485,162	75%	1,393,681	91,481	7%
Supplemental Roll	200,000	200,000	75,530	38%	56,844	18,686	33%
Sales Tax	4,650,000	4,650,000	2,869,517	62%	3,246,196	(376,679)	-12%
Public Safety Sales Tax	273,000	273,000	138,987	51%	153,763	(14,776)	-10%
Transient Occupancy Taxes	890,000	890,000	468,456	53%	469,711	(1,255)	0%
Franchise (Refuse ,Cable ,PG&E)	961,180	961,180	277,386	29%	306,641	(29,255)	-10%
Property Transfer Tax	267,800	267,800	252,792	94%	145,509	107,283	74%
TOTAL TAXES	9,214,180	9,214,180	5,567,830	60%	5,772,345	(204,515)	-4%
<u>LICENSES/PERMITS</u>							
Business License	154,500	154,500	145,964	94%	143,825	2,139	1%
Other Permits	48,100	48,100	30,648	64%	31,144	(496)	-2%
TOTAL LICENSES/PERMITS	202,600	202,600	176,612	87%	174,969	1,643	1%
<u>FINES AND PENALTIES</u>							
Parking Enforcement	13,400	13,400	8,574	64%	6,252	2,322	37%
City Code Enforcement	77,300	77,300	23,589	31%	35,559	(11,970)	-34%
Business tax late fee/other fines	2,600	2,600	1,043	40%	1,708	(665)	-39%
TOTAL FINES AND PENALTIES	93,300	93,300	33,206	36%	43,519	(10,313)	-24%
<u>OTHER AGENCIES</u>							
Motor Vehicle in-Lieu	2,080,000	2,080,000	885,429	43%	1,374,654	(489,225)	-36%
Other Revenue - Other Agencies	271,900	271,900	175,031	64%	61,503	113,528	185%
TOTAL OTHER AGENCIES	2,351,900	2,351,900	1,060,460	45%	1,436,157	(375,697)	-26%
<u>CHARGES CURRENT SERVICES</u>							
False Alarm Charge	24,700	24,700	11,677	47%	19,449	(7,772)	-40%
Business License Application Review	20,900	20,900	16,628	80%	15,549	1,079	7%
Recreation Classes	338,784	338,784	4,525	1%	65,672	(61,147)	-93%
General Administration Overhead	2,007,978	2,007,978	1,338,652	67%	1,237,289	101,363	8%
Other Charges Current Services	195,775	195,775	307,279	157%	130,511	176,768	135%
TOTAL CURRENT SERVICES	2,588,137	2,588,137	1,678,761	65%	1,468,470	210,291	14%
<u>OTHER REVENUE</u>							
Use of money/property	775,550	775,550	441,919	57%	304,666	137,253	45%
Other revenues	24,200	24,200	5,571	23%	25,087	(19,516)	-78%
TOTAL OTHER REVENUE	799,750	799,750	447,490	56%	329,753	117,737	36%
<u>TRANSFERS IN</u>							
Park Maintenance	200,000	200,000	100,000	50%	50,000	50,000	100%
Sewer Enterprise	17,500	17,500	11,666	67%	11,667	(1)	0%
Water Enterprise	17,500	17,500	11,667	67%	11,667	-	n/a
Public Safety	273,000	273,000	182,000	67%	180,000	2,000	1%
Community Cultural Center	312,000	312,000	208,000	67%	-	208,000	n/a
Other Funds	3,986	3,986	-	n/a	346,888	(346,888)	-100%
TOTAL TRANSFERS IN	823,986	823,986	513,333	62%	600,222	(86,889)	-14%
TOTAL GENERAL FUND	16,073,853	16,073,853	9,477,692	59%	9,825,435	(347,743)	-4%



City of Morgan Hill
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For the Month of February 2004
67% of Year Completed

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% OF BUDGET
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	653,400	653,400	390,928	60%	440,783	(49,855)	-11%
Measure A & B	-	-	-	n/a	-	-	n/a
Tea 21	-	-	-	n/a	-	-	n/a
Transfers In	700,000	700,000	450,000	64%	588,500	(138,500)	-24%
Project Reimbursement	-	-	106,236	n/a	70,402	35,834	51%
Interest / Other Revenue/Other Charges	14,861	14,861	19,169	129%	26,254	(7,085)	-27%
202 STREET MAINTENANCE	1,368,261	1,368,261	966,333	71%	1,125,939	(159,606)	-14%
204/205 PUBLIC SAFETY TRUST							
Interest Income	9,956	9,956	4,295	43%	10,894	(6,599)	-61%
Police Grant/SLEF	100,000	100,000	100,000	100%	100,000	-	n/a
PD Block Grant	-	-	-	n/a	-	-	n/a
CA Law Enforcement Equip. Grant	-	-	-	n/a	20,765	(20,765)	-100%
Federal Police Grant (COPS)	-	-	-	n/a	17,874	(17,874)	-100%
Transfers In	-	834	-	n/a	-	-	n/a
204/205 PUBLIC SAFETY TRUST	109,956	110,790	104,295	94%	149,533	(45,238)	-30%
206 COMMUNITY DEVELOPMENT							
Building Fees	1,100,500	1,100,500	1,306,801	119%	740,643	566,158	76%
Planning Fees	616,496	616,496	299,363	49%	382,137	(82,774)	-22%
Engineering Fees	519,600	519,600	214,265	41%	390,578	(176,313)	-45%
Other Revenue/Current Charges	9,763	9,763	16,822	172%	31,300	(14,478)	-46%
Transfers	30,000	55,486	20,000	36%	-	20,000	n/a
206 COMMUNITY DEVELOPMENT	2,276,359	2,301,845	1,857,251	81%	1,544,658	312,593	20%
207 GENERAL PLAN UPDATE	76,087	76,087	66,164	87%	76,422	(10,258)	-13%
215 and 216 HCD BLOCK GRANT							
HCD allocation	152,000	152,000	-	n/a	-	-	n/a
Interest Income/Other Revenue	3,900	3,900	6,622	170%	15,372	(8,750)	-57%
Transfers	782	782	-	n/a	-	-	n/a
215 and 216 HCD BLOCK GRANT	156,682	156,682	6,622	4%	15,372	(8,750)	-57%
210 COMMUNITY CENTER	6,198	6,198	2,751	44%	113,727	(110,976)	-98%
220 MUSEUM RENTAL	41	41	8	20%	54	(46)	-85%
225 ASSET SEIZURE	583	583	359	62%	862	(503)	-58%
229 LIGHTING AND LANDSCAPE	127,770	127,770	68,917	54%	68,325	592	1%
232 ENVIRONMENTAL PROGRAMS	387,209	387,209	203,671	53%	219,714	(16,043)	-7%
234 MOBILE HOME PARK RENT STAB.	6,298	56,298	5,044	9%	6,665	(1,621)	-24%
235 SENIOR HOUSING	6,897	6,897	2,407	35%	9,362	(6,955)	-74%
236 HOUSING MITIGATION	27,775	27,775	24,857	89%	16,862	7,995	47%
240 EMPLOYEE ASSISTANCE	20,162	20,162	20,675	103%	46,822	(26,147)	-56%
TOTAL SPECIAL REVENUE FUNDS	4,570,278	4,646,598	3,329,354	72%	3,394,317	(64,963)	-2%



City of Morgan Hill
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For the Month of February 2004
67% of Year Completed

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% OF BUDGET
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	435,072	435,072	616,237	142%	337,693	278,544	82%
302 PARK MAINTENANCE	257,923	257,923	180,258	70%	270,698	(90,440)	-33%
303 LOCAL DRAINAGE	291,028	291,028	119,518	41%	253,120	(133,602)	-53%
304 LOCAL DRAINAGE/NON AB1600	157,378	157,378	104,115	66%	200,727	(96,612)	-48%
305 OFF-STREET PARKING	95	95	38	40%	64	(26)	-41%
306 OPEN SPACE	57,428	57,428	107,129	187%	4,017	103,112	2567%
309 TRAFFIC MITIGATION	662,507	662,507	1,024,251	155%	331,837	692,414	209%
311 POLICE MITIGATION	51,569	51,569	54,311	105%	58,675	(4,364)	-7%
313 FIRE MITIGATION	147,884	147,884	162,262	110%	157,640	4,622	3%
317 RDA CAPITAL PROJECTS							
Property Taxes & Supplemental Roll	14,086,573	14,086,573	7,343,297	52%	8,686,635	(1,343,338)	-15%
Development Agreements			-	n/a	-	-	n/a
Interest Income, Rents			122,746	n/a	206,437	(83,691)	-41%
Other Agencies/Current Charges	9,450,000	9,450,000	1,650,116	17%	56,764	1,593,352	2807%
317 RDA CAPITAL PROJECTS	23,536,573	23,536,573	9,116,159	39%	8,949,836	166,323	2%
327/328 RDA L/M HOUSING							
Property Taxes & Supplemental Roll	3,791,085	3,791,085	2,208,123	58%	2,146,370	61,753	3%
Interest Income, Rent	45,364	45,364	74,766	165%	77,129	(2,363)	-3%
Other	90	90	1,073	1192%	670	403	60%
327/328 RDA L/M HOUSING	3,836,539	3,836,539	2,283,962	60%	2,224,169	59,793	3%
346 PUBLIC FACILITIES NON-AB1600	9,875,877	9,875,877	242,192	2%	242,853	(661)	0%
347 PUBLIC FACILITIES	46,900	155,861	457,392	293%	62,387	395,005	633%
348 LIBRARY	30,782	30,782	50,402	164%	29,610	20,792	70%
350 UNDERGROUNDING	31,495	31,495	35,381	112%	53,684	(18,303)	-34%
340 MORGAN HILL BUS.RANCH CIP I	1,144	1,144	455	40%	765	(310)	-41%
342 MORGAN HILL BUS.RANCH CIP II	1,282	1,282	511	40%	860	(349)	-41%
360 COMMUNITY/REC IMPACT FUND			4,069	n/a	-	4,069	n/a
TOTAL CAPITAL PROJECTS FUNDS	39,421,476	39,530,437	14,558,642	37%	13,178,635	1,380,007	10%

DEBT SERVICE FUNDS

527 HIDDEN CREEK	-	-	-	n/a	-	-	n/a
533 DUNNE AVE. / CONDOT ROAD	-	-	-	n/a	-	-	n/a
536 ENCINO HILLS	1,631	1,631	640	39%	1,073	(433)	-40%
539 MORGAN HILL BUSINESS PARK	447	447	111	25%	183	(72)	-39%
542 SUTTER BUSINESS PARK	730	730	235	32%	395	(160)	-41%
545 COCHRANE BUSINESS PARK	119,887	119,887	109,906	92%	122,068	(12,162)	-10%
551 JOLEEN WAY	34,955	34,955	17,875	51%	16,919	956	6%
TOTAL DEBT SERVICE FUNDS	157,650	157,650	128,767	82%	140,638	(11,871)	-8%



City of Morgan Hill
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For the Month of February 2004
67% of Year Completed

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% OF BUDGET
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	5,321,460	5,321,460	3,536,973	66%	3,381,765	155,208	5%
Interest Income	51,960	51,960	76,313	147%	80,859	(4,546)	-6%
Sewer Rate Stabilization	-	-	-	n/a	-	-	n/a
Other Revenue/Current Charges	<u>113,950</u>	<u>113,950</u>	<u>111,071</u>	<u>97%</u>	<u>89,825</u>	<u>21,246</u>	<u>24%</u>
640 SEWER OPERATION	5,487,370	5,487,370	3,724,357	68%	3,552,449	171,908	5%
641 SEWER EXPANSION							
Interest Income	26,580	26,580	50,429	190%	95,109	(44,680)	-47%
Connection Fees	600,000	600,000	1,576,534	263%	403,608	1,172,926	291%
Other	<u>-</u>	<u>-</u>	<u>528</u>	<u>n/a</u>	<u>528</u>	<u>-</u>	<u>n/a</u>
641 SEWER EXPANSION	626,580	626,580	1,627,491	260%	499,245	1,128,246	226%
642 SEWER RATE STABILIZATION	89,558	89,558	35,859	40%	270,921	(235,062)	-87%
643 SEWER-CAPITAL PROJECT	525,416	525,416	277,217	53%	308,274	(31,057)	-10%
TOTAL SEWER FUNDS	6,728,924	6,728,924	5,664,924	84%	4,630,889	1,034,035	22%
650 WATER OPERATION							
Water Sales	5,738,350	5,738,350	4,450,302	78%	4,192,110	258,192	6%
Meter Install & Service	40,000	40,000	28,489	71%	32,442	(3,953)	-12%
Transfers-In, and Interest Income	1,045,785	1,045,785	739,703	71%	183,143	556,560	304%
Other Revenue/Current Charges	<u>249,584</u>	<u>249,584</u>	<u>375,254</u>	<u>150%</u>	<u>238,584</u>	<u>136,670</u>	<u>57%</u>
650 WATER OPERATION	7,073,719	7,073,719	5,593,748	79%	4,646,279	947,469	20%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	501,803	501,803	561,739	112%	244,560	317,179	130%
Water Connection Fees	<u>160,000</u>	<u>160,000</u>	<u>272,452</u>	<u>170%</u>	<u>101,445</u>	<u>171,007</u>	<u>169%</u>
651 WATER EXPANSION	661,803	661,803	834,191	126%	346,005	488,186	141%
652 Water Rate Stabilization	20,517	20,517	6,423	31%	13,754	(7,331)	-53%
653 Water Capital Project	402,395	402,395	557,897	139%	665,037	(107,140)	-16%
TOTAL WATER FUNDS	8,158,434	8,158,434	6,992,259	86%	5,671,075	1,321,184	23%
TOTAL ENTERPRISE FUNDS	14,887,358	14,887,358	12,657,183	85%	10,301,964	2,355,219	23%
INTERNAL SERVICE FUNDS							
730 INFORMATION SERVICES	245,262	245,262	163,507	67%	254,128	(90,621)	-36%
740 BUILDING MAINTENANCE SERVICES	891,042	891,042	595,480	67%	558,124	37,356	7%
745 CIP ADMINISTRATION	1,447,120	1,447,120	738,149	51%	820,478	(82,329)	-10%
760 UNEMPLOYMENT INSURANCE	29,452	29,452	7,363	25%		7,363	n/a
770 WORKERS COMPENSATION	687,700	687,700	304,234	44%	292,061	12,173	4%
790 EQUIPMENT REPLACEMENT	198,367	268,313	178,972	67%	363,366	(184,394)	-51%
793 CORPORATION YARD COMMISSION	160,005	160,005	172,597	108%	876,634	(704,037)	-80%
795 GENERAL LIABILITY INSURANCE	389,927	389,927	257,575	66%	230,666	26,909	12%
TOTAL INTERNAL SERVICE FUNDS	4,048,875	4,118,821	2,417,877	59%	3,395,457	(977,580)	-29%



City of Morgan Hill
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For the Month of February 2004
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FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% OF BUDGET
AGENCY FUNDS							
841 M.H. BUS.RANCH A.D. I	736,175	736,175	379,755	52%	257,711	122,044	47%
842 M.H. BUS.RANCH A.D. II	37,177	37,177	36,175	97%	17,011	19,164	113%
843 M.H. BUS.RANCH 1998	883,205	883,205	416,804	47%	461,421	(44,617)	-10%
844 M.H. RANCH REFUNDING 2004A			1,117,583	n/a		1,117,583	n/a
845 MADRONE BP-TAX EXEMPT	807,439	807,439	397,751	49%	383,670	14,081	4%
846 MADRONE BP-TAXABLE	167,254	167,254	83,500	50%	121,768	(38,268)	-31%
848 TENNANT AVE.BUS.PK A.D.	39,523	39,523	63,534	161%	35,720	27,814	78%
881 POLICE DONATION TRUST FUND	245	245	202	82%	332	(130)	-39%
TOTAL AGENCY FUNDS	2,671,018	2,671,018	2,495,304	93%	1,277,633	1,217,671	95%
TOTAL FOR ALL FUNDS	81,830,508	82,085,735	45,064,819	55%	41,514,079	3,233,845	8%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2003/04
For the Month of February 2004
67% of Year Completed

FUND NO.	FUND/ACTIVITY	THIS MONTH ACTUAL EXPENSES	ADOPTED BUDGET	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET
010 GENERAL FUND								
I. GENERAL GOVERNMENT								
COUNCIL AND MISCELLANEOUS GOVT.								
	City Council	13,164	194,400	194,400	144,097	18,992	163,089	84%
	Community Promotions	986	31,542	31,542	14,927	-	14,927	47%
	COUNCIL AND MISCELLANEOUS GO	14,150	225,942	225,942	159,024	18,992	178,016	79%
	CITY ATTORNEY	44,115	615,917	615,917	354,217	114,720	468,937	76%
CITY MANAGER								
	City Manager	27,743	391,162	391,162	238,468	404	238,872	61%
	Cable Television	944	45,236	46,986	22,992	19,573	42,565	91%
	Communications & Marketing	10,817	106,576	111,834	62,881	14,226	77,107	69%
	CITY MANAGER	39,504	542,974	549,982	324,341	34,203	358,544	65%
RECREATION								
	Recreation	72,071	455,503	463,468	308,271	46,200	354,471	76%
	Community & Cultural Center	50,418	739,223	766,023	344,782	116,699	461,481	60%
	Aquatics Center	6,452	273,890	273,890	15,461	-	15,461	6%
	Building Maintenance (CCC)	37,878	416,108	427,967	325,718	43,126	368,844	86%
	RECREATION	166,819	1,884,724	1,931,348	994,232	206,025	1,200,257	62%
HUMAN RESOURCES								
	Human Resources	42,618	582,687	582,687	363,584	-	363,584	62%
	Volunteer Programs	1,619	34,442	34,442	15,015	-	15,015	44%
	HUMAN RESOURCES	44,237	617,129	617,129	378,599	-	378,599	61%
CITY CLERK								
	City Clerk	16,839	302,672	303,533	153,180	861	154,041	51%
	Elections	3,341	70,576	70,576	25,611	-	25,611	36%
	CITY CLERK	20,180	373,248	374,109	178,791	861	179,652	48%
	FINANCE	79,951	889,208	891,223	592,726	923	593,649	67%
	MEDICAL SERVICES	-	-	5,000	-	-	-	n/a
	TOTAL GENERAL GOVERNMENT	408,956	5,149,142	5,210,650	2,981,930	375,724	3,357,654	64%
II. PUBLIC SAFETY								
POLICE								
	PD Administration	37,877	491,711	491,711	315,390	-	315,390	64%
	Patrol	221,821	3,207,070	3,274,188	1,936,340	15,017	1,951,357	60%
	Support Services	67,166	897,092	897,092	544,086	2,580	546,666	61%
	Emergency Services/Haz Mat	8,005	33,858	33,858	36,956	4,948	41,904	124%
	Special Operations	68,692	1,176,399	1,179,974	681,602	-	681,602	58%
	Animal Control	6,506	76,159	76,159	48,947	-	48,947	64%
	Dispatch Services	53,905	858,218	859,318	484,197	1,100	485,297	56%
	POLICE	463,972	6,740,507	6,812,300	4,047,518	23,645	4,071,163	60%
	FIRE	312,081	3,745,220	3,745,220	2,496,651	-	2,496,651	67%
	TOTAL PUBLIC SAFETY	776,053	10,485,727	10,557,520	6,544,169	23,645	6,567,814	62%
III. COMMUNITY IMPROVEMENT								
	PARK MAINTENANCE	50,543	810,323	822,840	422,166	22,562	444,728	54%
	TOTAL COMMUNITY IMPROVEMENT	50,543	810,323	822,840	422,166	22,562	444,728	54%



City of Morgan Hill
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67% of Year Completed

FUND NO.	FUND/ACTIVITY	THIS MONTH ACTUAL EXPENSES	ADOPTED BUDGET	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET
IV. TRANSFERS								
	Public Safety			834		-	-	n/a
						-	-	n/a
						-	-	<u>n/a</u>
TOTAL TRANSFERS		-	-	834	-	-	-	n/a
TOTAL GENERAL FUND		1,235,552	16,445,192	16,591,844	9,948,265	421,931	10,370,196	63%
SPECIAL REVENUE FUNDS								
202 STREET MAINTENANCE								
	Street Maintenance/Traffic	150,462	1,533,793	1,672,928	852,933	154,508	1,007,441	60%
	Congestion Management	3,582	78,868	78,868	39,798	-	39,798	50%
	Street CIP	<u>18,697</u>	<u>514,800</u>	<u>1,111,206</u>	<u>520,239</u>	<u>708,761</u>	<u>1,229,000</u>	<u>111%</u>
202 STREET MAINTENANCE		172,741	2,127,461	2,863,002	1,412,970	863,269	2,276,239	80%
204/205 PUBLIC SAFETY/SUPP.LAW		22,799	273,582	273,582	182,388		182,388	67%
206 COMMUNITY DEVELOPMENT FUND								
	Planning	76,079	979,437	1,162,253	719,207	279,458	998,665	86%
	Building	62,506	956,070	1,016,487	525,761	52,972	578,733	57%
	PW-Engineering	<u>71,101</u>	<u>1,029,375</u>	<u>1,072,275</u>	<u>581,688</u>	<u>100,658</u>	<u>682,346</u>	<u>64%</u>
206 COMMUNITY DEVELOPMENT FUND		209,686	2,964,882	3,251,015	1,826,656	433,088	2,259,744	70%
207	GENERAL PLAN UPDATE	1,806	71,257	197,413	48,025	93,405	141,430	72%
210	COMMUNITY CENTER	26,000	312,000	312,000	208,000	-	208,000	67%
215/216	CDBG	4,011	195,769	463,742	91,971	100,163	192,134	41%
220	MUSEUM RENTAL	169	2,422	2,422	1,301	-	1,301	54%
225	ASSET SEIZURE					-	-	n/a
229	LIGHTING AND LANDSCAPE	29,889	154,755	167,001	106,627	28,929	135,556	81%
232	ENVIRONMENT PROGRAMS	13,382	452,029	499,894	230,267	71,438	301,705	60%
234	MOBILE HOME PARK	33,789	39,661	89,661	73,752	39,054	112,806	126%
235	SENIOR HOUSING TRUST FUNI	2,150	14,300	14,300	4,300	4,300	8,600	60%
236	HOUSING MITIGATION FUND	4,815	1,033,497	1,033,497	8,489	6,511	15,000	1%
240	EMPLOYEE ASSISTANCE	1,936	20,000	20,000	15,058	-	15,058	75%
TOTAL SPECIAL REVENUE FUNDS		523,173	7,661,615	9,187,529	4,209,804	1,640,157	5,849,961	64%
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	76,208	1,570,296	2,114,454	261,447	128,875	390,322	18%
302	PARK MAINTENANCE	-	200,000	200,000	100,000	-	100,000	50%
303	LOCAL DRAINAGE	143	2,028,393	2,365,774	8,987	-	8,987	0%
304	LOCAL DRAIN. NON-AB1600	41,446	191,868	218,868	60,036	39,224	99,260	45%
305	OFF STREET PARKING	-	3,986	3,986	-	-	-	n/a
309	TRAFFIC MITIGATION	125,863	936,333	2,035,819	479,679	542,246	1,021,925	50%
311	POLICE MITIGATION	554	1,206,645	1,226,645	23,364	10,000	33,364	3%
313	FIRE MITIGATION	734	401,545	551,545	519,501	9,101	528,602	96%
317	RDA BUSINESS ASSISTANCE	897,355	27,346,151	40,862,203	18,024,165	7,641,467	25,665,632	63%
327/328	RDA HOUSING	223,305	4,592,332	9,438,767	4,079,893	69,252	4,149,145	44%
346	PUBLIC FAC.NON AB1600	601	9,808,000	9,846,656	390,803	1,825,726	2,216,529	23%
347	PUBLIC FACILITIES	712	831,229	958,621	135,629	836,029	971,658	101%
348	LIBRARY IMPACT	19	225	225	150	-	150	67%
350	UNDERGROUNDING	98,590	190,437	190,437	98,845	124,954	223,799	118%
TOTAL CAPITAL PROJECTS FUNDS		1,465,530	49,307,440	70,014,000	24,182,499	11,226,874	35,409,373	51%



City of Morgan Hill
Year to Date Expenses - Fiscal Year 2003/04
For the Month of February 2004
67% of Year Completed

FUND NO.	FUND/ACTIVITY	THIS MONTH ACTUAL EXPENSES	ADOPTED BUDGET	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET
DEBT SERVICE FUNDS								
527	HIDDEN CREEK A.D.	-	-	-	-	-	-	n/a
536	ENCINO HILLS A.D.	-	-	-	-	-	-	n/a
539	MORGAN HILL BUS. PARK A.D.	-	-	-	-	-	-	n/a
542	SUTTER BUS. PARK A.D.	-	-	-	-	-	-	n/a
545	COCHRANE BUS. PARK A.D.	44,775	195,805	195,805	192,695	-	192,695	98%
551	JOLEEN WAY A.D.	628	40,540	40,540	32,472	-	32,472	80%
TOTAL DEBT SERVICE FUNDS		45,403	236,345	236,345	225,167	-	225,167	95%
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATION	573,753	7,418,125	7,513,797	5,433,460	82,898	5,516,358	73%
641	CAPITAL EXPANSION	3,859	3,576,249	3,697,697	273,579	36,790	310,369	8%
642	SEWER RATE STABILIZATION	197	2,369	2,369	1,579	-	1,579	67%
643	SEWER-CAPITAL PROJECTS	<u>12,324</u>	<u>437,843</u>	<u>1,616,022</u>	<u>447,382</u>	<u>433,456</u>	<u>880,838</u>	<u>55%</u>
TOTAL SEWER FUND(S)		590,133	11,434,586	12,829,885	6,156,000	553,144	6,709,144	52%
WATER								
	Water Operations Division	342,538	6,213,247	6,894,997	3,887,741	382,656	4,270,397	62%
	Meter Reading/Repair	27,475	637,156	669,538	271,288	241,021	512,309	77%
	Utility Billing	33,876	391,570	394,863	236,982	13,397	250,379	63%
	Water Conservation	<u>102</u>	<u>8,213</u>	<u>8,213</u>	<u>817</u>	<u>-</u>	<u>817</u>	<u>10%</u>
650	WATER OPERATIONS	403,991	7,250,186	7,967,611	4,396,828	637,074	5,033,902	63%
651	CAPITAL EXPANSION	89,933	1,546,253	2,652,299	800,721	569,184	1,369,905	52%
652	WATER RATE STABILIZATION	70,879	850,551	850,551	567,034	-	567,034	67%
653	WATER-CAPITAL PROJECTS	<u>7,472</u>	<u>2,158,239</u>	<u>2,951,477</u>	<u>675,548</u>	<u>774,258</u>	<u>1,449,806</u>	<u>49%</u>
TOTAL WATER FUND(S)		572,275	11,805,229	14,421,938	6,440,131	1,980,516	8,420,647	58%
TOTAL ENTERPRISE FUNDS		1,162,408	23,239,815	27,251,823	12,596,131	2,533,660	15,129,791	56%
INTERNAL SERVICE FUNDS								
730	INFORMATION SERVICES	17,646	245,262	262,996	141,280	76,752	218,032	83%
740	BUILDING MAINTENANCE	30,871	642,029	665,031	262,471	26,504	288,975	43%
745	CIP ENGINEERING	87,881	1,447,120	1,552,806	826,031	101,888	927,919	60%
760	UNEMPLOYMENT	12,328	30,000	30,000	28,318	-	28,318	94%
770	WORKERS COMPENSATION	62,229	697,200	736,200	518,982	25,274	544,256	74%
790	EQUIPMENT REPLACEMENT	147	251,761	260,878	43,171	-	43,171	17%
793	CORP YARD COMMISSION	1,639	160,005	170,920	61,090	76,870	137,960	81%
795	GEN. LIABILITY INSURANCE	485	371,600	371,600	320,784	-	320,784	86%
TOTAL INTERNAL SERVICE FUNDS		213,226	3,844,977	4,050,431	2,202,127	307,288	2,509,415	62%
AGENCY FUNDS								
841	MORGAN HILL BUS RANCH I	1,021,402	723,706	723,706	2,008,350	-	2,008,350	278%
842	MORGAN HILL BUS RANCH II	98,468	38,838	38,838	139,980	-	139,980	360%
843	MORGAN HILL BUS RANCH 98	286,069	871,086	871,086	870,768	-	870,768	100%
844	MH RANCH RSMNT 2004A	589,424	-	-	589,424	-	589,424	n/a
845	MADRONE BP-TAX EXEMPT	297,630	799,731	799,731	806,318	-	806,318	101%
846	MADRONE BP-TAXABLE	71,717	172,343	172,343	169,680	-	169,680	98%
848	TENNANT AVE BUS PARK AD	-	-	-	-	-	-	n/a
881	POLICE DONATION TRUST	-	-	-	-	-	-	n/a
TOTAL AGENCY FUNDS		2,364,710	2,605,704	2,605,704	4,584,520	-	4,584,520	176%
REPORT TOTAL		7,010,002	103,341,088	129,937,676	57,948,513	16,129,910	74,078,423	57%



City of Morgan Hill
Enterprise Funds Report - Fiscal Year 2003/04
For the Month of February 2004
67% of Year Completed

YTD INCOME STATEMENT FOR CURRENT AND PRIOR YEAR

	Sewer Operations				Water Operations			
	Budget	YTD	% of Budget	Prior YTD	Budget	YTD	% of Budget	Prior YTD
Operations								
Revenues								
Service Charges	\$ 5,321,460	\$ 3,536,973	66%	\$ 3,381,765	\$ 5,738,350	\$ 4,450,302	78%	\$ 4,192,110
Meter Install & Service					40,000	28,489	71%	32,442
Other	113,950	111,071	97%	89,825	249,584	389,371	156%	238,584
Total Operating Revenues	5,435,410	3,648,044	67%	3,471,590	6,027,934	4,868,162	81%	4,463,136
Expenses								
Operations	4,533,215	3,073,559	68%	2,436,954	4,750,307	3,263,597	69%	2,655,583
Meter Reading/Repair					637,156	271,288	43%	380,664
Utility Billing/Water Conservation					399,783	237,799	59%	280,071
Total Operating Expenses	4,533,215	3,073,559	68%	2,436,954	5,787,246	3,772,684	65%	3,316,318
Operating Income (Loss)	902,195	574,485		1,034,636	240,688	1,095,478		1,146,818
Nonoperating revenue (expense)								
Interest Income	51,960	76,313	147%	80,859		28,396		67,225
Interest Expense/Debt Services	(856,625)	(719,378)	84%	(667,145)	(316,806)	(158,960)	50%	(164,273)
Principal Expense/Debt Services	(1,115,000)	(1,115,000)	100%	(635,000)	(228,634)	(31,260)	14%	(29,147)
Total Nonoperating revenue (expense)	(1,919,665)	(1,758,065)		(1,221,286)	(545,440)	(161,824)		(126,195)
Income before operating xfers	(1,017,470)	(1,183,580)		(186,650)	(304,752)	933,654		1,020,623
Operating transfers in	-	-		-	1,045,785	697,190	67%	115,918
Operating transfers (out)	(913,285)	(525,523)	58%	(510,918)	(917,500)	(433,924)	47%	(1,108,333)
Net Income (Loss)	\$ (1,930,755)	\$ (1,709,103)		\$ (697,568)	\$ (176,467)	\$ 1,196,920		\$ 28,208



City of Morgan Hill
Balance Sheets - Water and Sewer Funds
February 29, 2004
67% of Year Complete

	Sewer Operations (640)	Sewer Expansion Stabilization Capital Projects (641-643)	Water Operations (650)	Water Expansion Stabilization Capital Projects (651-653)
ASSETS				
Cash and investments:				
Unrestricted	2,798,686	6,646,962	3,045,248	4,046,647
Restricted ¹	1,893,333	6,040,618	390,398	(81,412)
Accounts Receivable		7,093		
Utility Receivables	786,745		828,291	
Less Allowance for Doubtful Accounts	(2,633)		(2,751)	
Notes Receivable ²				
Fixed Assets ³	31,802,422	9,911,459	23,624,143	8,620,811
Total Assets	<u>37,278,553</u>	<u>22,606,132</u>	<u>27,885,329</u>	<u>12,586,046</u>
LIABILITIES				
Accounts Payable and Accrued Liabilities	256,724	128,212	60,491	
Deposits for Water Services & Other Deposits			34,292	
Deferred Revenue ⁴				
Bonds Payable	25,390,000		5,985,863	
Discount on Bonds and Other Liabilities	(2,705,125)		(957,773)	
Accrued Vacation and Comp Time	41,966		88,959	
Total liabilities	<u>22,983,565</u>	<u>128,212</u>	<u>5,211,832</u>	<u>0</u>
FUND EQUITY				
Contributed Capital	6,686,483		13,047,150	
Retained Earnings				
Reserved for:				
Noncurrent water/sewer assets & debt	9,075,581	9,911,459	18,507,094	8,620,811
Encumbrances	82,898	470,246	637,074	1,343,442
Notes Receivable		0		
Restricted Cash	1,893,333		390,398	
Total Reserved Retained Earnings	11,051,812	10,381,705	19,534,566	9,964,253
Unreserved Retained Earnings	3,243,176	12,096,215	3,138,931	2,621,793
Total Fund Equity	<u>14,294,988</u>	<u>22,477,920</u>	<u>22,673,497</u>	<u>12,586,046</u>
Total Liabilities and Fund Equity	<u>37,278,553</u>	<u>22,606,132</u>	<u>27,885,329</u>	<u>12,586,046</u>

¹ Restricted for Bond Reserve requirements and capital expansion.

² Includes Note for Sewer Financing Agreements.

³ Includes Water and Sewer infrastructure and the City's share of the Wastewater treatment plant.

⁴ Includes the deferred payment portion of the loans noted above.



¹ Restricted for Petty Cash use, Bond Reserve requirements and sewer and water capital expansion.
² Includes Housing Rehab loans, Financing Agreements for Public Works Fees and loans for several housing and Agency projects.
³ Includes Water and Sewer infrastructure, the City's share of the Wastewater treatment plant and RDA properties held for resale.
⁴ Includes the deferred payment portion of the loans noted above.
⁵ Designated for economic uncertainty, emergencies, and Fire Master Plan implementation



City of Morgan Hill
Community Development Report - Fiscal Year 2003/04
For the Month of February 2004
67% of Year Completed

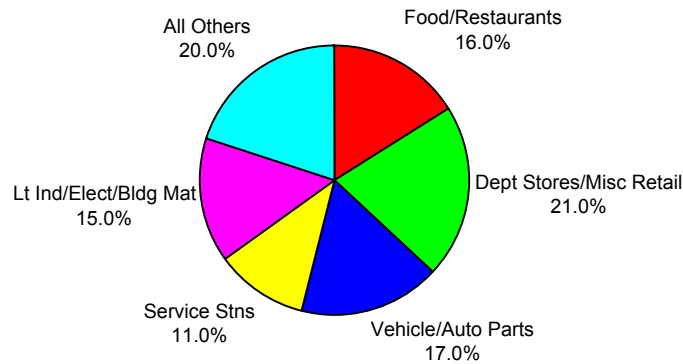
	Building			Planning			Engineering		
	<u>Budget</u>	<u>Actual</u>	<u>% of Budget</u>	<u>Budget</u>	<u>Actual</u>	<u>% of Budget</u>	<u>Budget</u>	<u>Actual</u>	<u>% of Budget</u>
Revenues	1,122,250	<u>1,319,075</u>	118%	638,246	<u>311,637</u>	49%	541,351	<u>226,540</u>	42%
Expenses	1,016,487	525,761		1,162,253	719,207		1,072,275	581,688	
Encumbrances		<u>52,972</u>			<u>279,458</u>			<u>100,658</u>	
Sub-total		<u>578,733</u>	57%		<u>998,665</u>	86%		<u>682,346</u>	64%
Excess/(Deficit)	105,763	740,342		(524,007)	(687,028)		(530,924)	(455,806)	



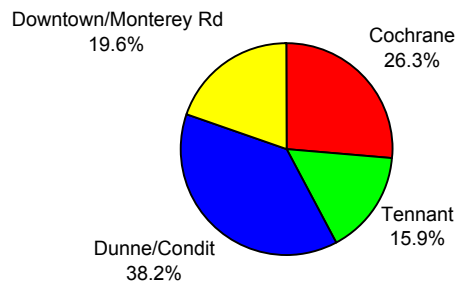
City of Morgan Hill
Sales Tax Comparison - Fiscal Year 2003/04
For the Month of February 2004
67% of Year Completed

Month	Amount Collected for Month for Fiscal Year			Amount Collected YTD for Fiscal Year			Comparison of YTD for fiscal years	
	03/04	02/03	01/02	03/04	02/03	01/02	03/04 to 02/03	03/04 to 01/02
July	\$338,300	\$367,600	\$377,700	\$338,300	\$367,600	\$377,700	(29,300)	(39,400)
August	\$451,000	\$447,000	\$503,600	\$789,300	\$814,600	\$881,300	(25,300)	(92,000)
September	\$232,994	\$361,932	\$437,056	\$1,022,294	\$1,176,532	\$1,318,356	(154,238)	(296,062)
October	\$316,100	\$354,915	\$339,000	\$1,338,394	\$1,531,447	\$1,657,356	(193,053)	(318,962)
November	\$421,400	\$474,800	\$452,000	\$1,759,794	\$2,006,247	\$2,109,356	(246,453)	(349,562)
December	\$331,624	\$384,154	\$538,465	\$2,091,418	\$2,390,401	\$2,647,821	(298,983)	(556,403)
January	\$349,500	\$368,600	\$393,900	\$2,440,918	\$2,759,001	\$3,041,721	(318,083)	(600,803)
February	\$428,600	\$487,195	\$466,068	\$2,869,518	\$3,246,196	\$3,507,789	(376,678)	(638,271)
March		\$225,908	\$351,548		\$3,472,104	\$3,859,337		
April		\$292,698	\$341,042		\$3,764,802	\$4,200,379		
May		\$394,500	\$461,500		\$4,159,302	\$4,661,879		
June		\$477,624	\$208,416		\$4,636,926	\$4,870,295		
Year To Date Totals				\$2,869,518	\$4,636,926	\$4,870,295		
Sales Tax Budget for Year				\$4,650,000	\$5,330,000	\$5,300,000		
Percent of Budget				62%	87%	92%	-12%	-18%
Percent of increase(decrease)								

**Sales Tax Distribution
by Business Segment
Second Quarter 2003**



**Sales Distribution
by Area
Second Quarter 2003**





CITY COUNCIL STAFF REPORT

MEETING DATE: *March 17, 2004*

APPROVE AMENDMENT TO PURCHASE ORDER FOR SECURITY SYSTEM AT THE AQUATICS CENTER

RECOMMENDED ACTION(S): Authorize the City Manager to approve an amendment to Purchase Order #4899 for Bay Alarm Company in the amount of \$17,000 for additional work on the Security System at the Aquatics Center Project.

EXECUTIVE SUMMARY:

In October of 2003, the City Manager executed a purchase order to Bay Alarm Company in the amount of \$19,960.75 for them to supply and install the fire alarm, burglar alarm and closed circuit security television camera systems at the Aquatics Center project. Since Bay Alarm does not pay prevailing wages to their installers, the City was expecting to utilize another subcontractor for the prerequisite electrical "rough in" work. In December, we obtained a cost quote of \$64,461.95 from the electrical subcontractor who is currently working on the project, All Bay Electric. Staff felt that the quoted amount was substantially over the estimated costs to install the "rough in." We subsequently met with All Bay Electric and expressed our concerns regarding the additional cost. They agreed to review their quote and later submitted a revised price of \$40,588. Staff still felt this was an exorbitant amount so we asked Bay Alarm if they had subcontractors that paid prevailing wages that may be interested in submitting pricing. They agreed and submitted quotes for the "rough in" from two of their subcontractors for \$17,000 and \$18,500 respectively. This price was much more in line with what staff expected the costs to be. Since Bay Alarm is currently providing the systems under the existing purchase order, it made sense to also contract with them for the "rough in" utilizing their lowest cost subcontractor. Staff recommends approval for amendment to Purchase Order #4899 for the additional \$17,000 for a new total purchase order in the total amount of \$36,960.75.

FISCAL IMPACT: This amount is currently included in the adopted project budget for CIP #115000-Aquatics Center and no additional funding is required.

Agenda Item # 2

Prepared By:

Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 17, 2004*

AMEND CONSULTANT AGREEMENTS FOR CONSTRUCTION SERVICES AT THE AQUATICS CENTER

RECOMMENDED ACTION(S):

- 1) Amend Consultant Agreement for the second time with ELS Architects for an additional fee not to exceed \$50,000 subject to City Attorney approval.
- 2) Amend Consultant Agreement with Biggs Cardosa Associates for an additional fee not to exceed \$27,000 subject to City Attorney approval.
- 3) Amend Consultant Agreement with Pacific Geotechnical Engineering for an additional fee not to exceed \$2,200 subject to City Attorney approval.

EXECUTIVE SUMMARY:

As we are nearing the completion of the Aquatic Center, it is necessary to amend the above listed Consultant Agreements for additional services required to finish the project. The Business Assistance and Housing Services department prepared an agreement with ELS in December of 2002 for design and construction services at the Aquatic Center. They subsequently amended the agreement for additional scope of services in April 2003. It is necessary to amend that agreement a second time for additional work required during construction including City requested changes. The total additional fee requested is \$50,000. If the additional amount is approved the total not to exceed fee would be \$910,000. Please see attached memo from Jim Dumas for specific details.

The City entered into an agreement in August 2003 with Biggs Cardosa Associates for special inspections at the Aquatics Center project. At that time they estimated their scope of services estimated based on the unapproved set of plans. Various changes were made to the plans in order to obtain a building permit. Some of these plan check changes required additional scope of services for special inspections. Also, the number of required inspections has increased due to circumstances beyond our control such as weather, schedule (overtime), and contractor changes. The total additional fee requested is \$27,000. If the additional amount is approved the total not to exceed fee would be \$76,000.

Finally, the City entered into an agreement in August 2003 with Pacific Geotechnical Engineering for earthwork observation and compaction testing at the Aquatics Center project. At that time, their scope of services was also estimated based on unapproved plans and an anticipated construction schedule. Due to the inclement weather, it will be necessary for the number of their visits to be increased by approximately 10%. The total additional fee requested is \$2,200. If the additional amount is approved the total not to exceed fee would be \$24,410.

FISCAL IMPACT: If approved, these additional fees would be funded by the construction contingency for CIP project budget #115000-Aquatics Center and no additional funding is required.

Agenda Item # 3

Prepared By:

Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 17, 2004*

AQUATICS CENTER PROJECT – FEBRUARY CONSTRUCTION PROGRESS REPORT

RECOMMENDED ACTION(S): *Information Only*

EXECUTIVE SUMMARY:

Previous Council action awarded the contract for construction of the Aquatics Center Project to Gonsalves & Stronck Construction Company, Inc. At that time, staff informed Council that we would report monthly on the progress of the construction. Attached is the progress report for the month of February. This report has been sent to our webmaster for posting on the City's website. Due to previous delays and the latent effects of inclement weather this past month, the project is approximately 2 weeks behind schedule. The contractor has been asked to submit a "completion schedule" to demonstrate how they intend to make up the lost time. Consequently, the concrete deck work, including the prerequisite underground utilities (pool piping, electrical, etc.), is now the critical path activity. The building construction is proceeding, slightly impacted by weather. Barring unforeseen circumstances, including excessive rain days at this critical point of the project, construction completion is still scheduled for May 24th, 2004. The project is currently within budget and staff is working with the subcommittee to prepare a prioritized list for purchasing FF&E (furnishings, fixtures and equipment).

FISCAL IMPACT: None

Agenda Item # 4

Prepared By:

Project Manager

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2004

FOLLOW UP REPORT ON THE JACKSON OAKS DRIVE PRELIMINARY TRAFFIC CALMING STUDY BY FEHR & PEERS

Agenda Item # 5

Prepared By:

Department Director

Submitted By:

City Manager

RECOMMENDED ACTION: Information only.

EXECUTIVE SUMMARY: At our January 21, 2004 Council meeting, Council approved preliminary traffic calming studies at four city locations by Fehr & Peers. At that meeting, a resident of the Jackson Oaks Homeowners Association commented that he did not think the area of Jackson Oaks studied was sufficient and that the full length of the street should be studied for possible traffic calming measures.

When the traffic calming study with Fehr & Peers was approved, we had identified four areas in the city where residents brought issues to either the Public Works and/or Police Departments that we collectively thought were appropriate for this preliminary study. The Jackson Oaks area had previously been studied by our Police Department and they gave the information to our Engineering Department about the area to be studied, and that is the steep downhill grade that exists on the westerly most 2500 lineal feet of Jackson Oaks Drive, ending at E. Dunne Avenue. This area is where our Police Department had received a significant amount of complaints regarding speeding, especially westbound as cars accelerate down the hill.

The contract with Fehr & Peers specifically noted that it is this area that was previously studied by our Police Department that should be reviewed for possible traffic calming measures.

In terms of moving forward, the policy adopted by Council on January 21, 2004 makes it very clear that considerable input is needed from the adjacent residents prior to moving any study area forward and our Public Works Department will be meeting with the Jackson Oaks Homeowners Association soon to inform them of the preliminary findings of Fehr & Peers Study and informing them how they could move forward with a petition if they wish to further explore the construction of traffic calming features anywhere within the Jackson Oaks Homeowners Association boundaries.

FISCAL IMPACT: None at this time.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2004

AGREEMENT BETWEEN CITIES OF MORGAN HILL AND SAN JOSE FOR OBTAINING ORTHOPHOTO AERIAL PHOTOGRAPHS

RECOMMENDED ACTION: Authorize the City Manager, subject to City Attorney review and approval, to execute an Agreement with the City of San Jose for obtaining orthophoto aerial photographs of the City of Morgan Hill at a cost of \$37,568.

EXECUTIVE SUMMARY: The City has an opportunity to acquire aerial photographs of the Morgan Hill area from the City of San Jose. The photos, otherwise known as an orthophoto data set, are digital color aerials in a GIS mapping format that can be used in conjunction with the City's existing base map. The orthophoto data set will become a powerful planning tool for City staff due to the fact that it is linked to a recognized survey coordinate system, has a remarkably better resolution than the City's existing aerial photographs, and represents a more updated view of the City (2001 vs. 1988). The updated photos will allow for a resolution of 3 inches per pixel vs. the City's current digital photos of 3 feet per pixel.

The City of San Jose, in a joint licensing agreement with Santa Clara County and the Santa Clara Valley Water District, arranged to have the entire Santa Clara County captured with digital aerial photographs in 2001. The agreement between the three agencies allows for the City of San Jose to sublicense the photo data. Upon receiving the orthophoto data set, the City of Morgan Hill will be allowed to use, copy, transmit, distribute, and otherwise reproduce the photos for any purpose directly or indirectly related to its own internal business uses and needs. The City will not be allowed to sell or loan the image files to any third party without written permission from the City of San Jose and its partners.

If approved by the Council, Morgan Hill will join the cities of Menlo Park, Palo Alto, Santa Clara, Sunnyvale, Mountain View, and Saratoga, as well as Ames Research Center and Stanford University who have also purchased orthophoto data sets from San Jose and its partners.

Under the terms of the Agreement, the City of Morgan Hill will be purchasing the rights to use 3,295 orthophoto tiles covering the Morgan Hill area for a one-time cost of \$37,568. There will be no on-going charges to use the photos.

FISCAL IMPACT: Funding is available in the current year budget from the following accounts:

317-42231-7000	\$15,000
206-42231-5410	<u>\$22,568</u>
TOTAL	\$37,568

Agenda Item # 6

Prepared By:

Deputy Director PW

Approved By:

Department Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2004

Agenda Item # 7

**Prepared/Approved
By:**

**Council Services &
Records Manager**

Submitted By:

City Manager

FISCAL YEAR 2004-05 BUDGET, CIP and WORKPLAN CALENDAR

RECOMMENDED ACTION(S):

Approve Fiscal Year 2004-05 Budget, CIP and Workplan Calendar

EXECUTIVE SUMMARY:

The City Manager has provided staff with Fiscal Year 2004-05 Budget Guidelines and Instructions. The Finance Department, in consultation with the City Manager, has identified a budget calendar. Staff is requesting that the Council review and approve the following Fiscal Year 2004-05 Budget Calendar:

Date	Activity
Friday, May 14, 2004	Proposed FY 2004-05 Budget distributed to the City Council
Friday, May 21, 2004 (8:00 a.m. – 5:00 p.m.)	Proposed FY 2004-05 Budget, CIP and Workplan Workshop with City Council.
Wednesday, June 2, 2004	Public Hearing on the Proposed FY 2004-05 Budget & CIP Program and Workplan
Friday, June 4, 2004 (8:00 a.m. – 12:00 p.m.)	Conduct second workshop on Proposed FY 2004-05 Budget, CIP and Workplan, if necessary
Wednesday, June 16, 2004	Present Proposed FY 2004-05 Budget & CIP Program and Workplan to the Council for adoption

FISCAL IMPACT: The time necessary to prepare this staff report has been incorporated in the Council Services & Records Management Operating Budget.



CITY COUNCIL STAFF REPORT
MEETING DATE: March 17, 2004

Agenda Item # 8

Prepared By:

Contract Planner

Approved By:

CDD Director

Submitted By:

City Manager

**SUBDIVISION, SD-03-16: E. CENTRAL – WARMINGTON
(SOUTH)**

RECOMMENDED ACTION: Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

EXECUTIVE SUMMARY: The applicant is requesting to subdivide a 9.73-acre portion of the 28.345-acre project area to construct 26 units representing Phase 4 of the Morgan Lane development. The project is located on the south side of East Central Avenue and north of East Main Avenue.

The applicant is also requesting a Zoning Amendment to expand the existing Morgan Lane RPD to include this subdivision and a development agreement to cover the 26 lots planned for the subdivision.

Construction began on the Morgan Lane development in July 2002. Phase 4 consists of the 26 remaining lots of Morgan Lane. The developer was awarded a total of 36 building allotments in the 2002 Measure "P" competition for Phases 3 and 4 of Morgan Lane. Twenty-four of the allotments are for FY 2004-05 and 12 allotments are for FY 2005-06. Phase 3, consisting of 10 units from the FY 2004-05 allotment, was approved by the City Council in February 2004. Upon completion, the Morgan Lane development will consist of a total of 85 units with nine BMR's on approximately 28 acres.

The Tentative Map for Phase 4 as submitted is in accordance with the proposed expanded RPD plan that is to be considered by the Council at this meeting. The lot sizes, locations and street alignments are in accordance with the proposed expanded RPD. Phase 4 will be built on 5.433 acres, with a net build able acreage of 4.083 acres after the dedication of public rights-of-way, and the remaining portion of the subdivision (Lot 86, known as the "Kuwabara" property) will continue to be used for an agricultural operation.

The Planning Commission considered this application at the regular meeting of February 24th at which time the Commission voted 6-0 approving the request. The Planning Commission resolution, conditions of approval, and subdivision map are attached for reference. The staff report and minutes for the subdivision are attached to the development agreement request within this same agenda.

FISCAL IMPACT: None. Filing fees were paid to the City for the costs of processing this application.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2004

Agenda Item # 9

Prepared By:

Senior Planner

Approved By:

**Director of Community
Development**

Submitted By:

City Manager

SUBDIVISION APPLICATION SD 03-04: BARRETT-DITRI

RECOMMENDED ACTION(S): Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

EXECUTIVE SUMMARY:

The applicant is requesting approval of a 16-lot subdivision of a 5-acre parcel located on the north side of Barrett Ave., between the Barrett Elementary School and the Jehovah's Witnesses Church in the R-1 (7,000) zoning district. The proposed 16 lot subdivision would create single family lots ranging in size from 4,365 to 23,703 sq. ft. Access to the proposed lots would be from a cul-de-sac approximately 600 ft. in length.

Due to the project's proximity to the freeway, noise levels for the future residents have been identified as a significant environmental impact. Per the City's General Plan Noise Element, outdoor noise levels on the site must be reduced to 65 dBA(Ldn). To meet this requirement, a sound wall 8-10 ft tall along the eastern project boundary would be required. At Commission's February 24 meeting, a representative of the adjacent church expressed concern that the proposed wall would increase noise levels on the church site. The church representative also indicated that the church would be receptive to allowing the sound wall to be constructed on their property adjacent to the freeway. The Commission agreed that the best placement of the wall would be on the east side of the Church property. The Commission modified the project mitigation and conditions of approval to require the installation of the sound wall on the east side of the Jehovah Witness Church property subject to the approval of the Church officials.

The subdivision map as submitted is in compliance with the RPD plan scheduled for Council consideration within this same agenda. The lot sizes and locations are each per the proposed RPD.

This application was reviewed by the Planning Commission at their February 24, meeting, at which time the Commission voted 5-1, approving the request. The Planning Commission resolution, conditions of approval, and subdivision map are attached. The staff report for the subdivision is attached to the development agreement request within this same agenda.

FISCAL IMPACT: No budget adjustment required



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2004

CHANGE ORDER APPROVAL FOR ADDITIONAL WORK ON THE SIDEWALK, CURB & GUTTER REMOVAL AND REPLACEMENT, PHASE III 2003-2004 PROJECT

RECOMMENDED ACTION(S): Approve change order in the amount of \$22,500 for additional work on the Sidewalk, Curb & Gutter Removal and Replacement, Phase III 2003-2004 Project by contractor Monterey Peninsula Engineering, Inc.

EXECUTIVE SUMMARY: On November 5, 2003, Council awarded a contract to Monterey Peninsula Engineering for the Sidewalk, Curb & Gutter Removal and Replacement, Phase III 2003-2004 Project in the amount of \$65,140. The contractor has completed most of the original work and staff requests additional monies to issue a change order to complete additional curb, gutter, and driveway repair at 575 San Pedro Avenue. Work is deemed urgent due to the deteriorated condition of the curb, gutter and driveway. Staff recommends the removal and replacement at this location. A site map is attached.

Change orders that exceed bid contingency must be approved by Council. This project was awarded with a standard 10% contingency of \$6,514. Staff has been very satisfied with the work completed by Monterey Peninsula Engineering, Inc. and recommends their services for this work.

FISCAL IMPACT: The total cost for this change order is \$25,000 (which includes a 10% contingency of \$2,500) and project will be funded through the 03/04 Street Maintenance Budget (Account number 202-42231-6100) and sufficient funds exist to fund this change order. This change order will increase the total bid amount for the project to \$87,640.

Agenda Item #10

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: MARCH 17, 2004

Agenda Item # 11

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1657, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ENACTING SECTION 1.18.055 (Cost of Abatement - Definition) OF CHAPTER 1.18 (Abatement of Nuisances) OF TITLE 1 (Administration) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEFINITION OF COST OF ABATEMENT.

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1657, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On March 3, 2004, the City Council Introduced Ordinance No. 1657, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1657, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ENACTING SECTION 1.18.055 (Cost of Abatement - Definition) OF CHAPTER 1.18 (Abatement of Nuisances) OF TITLE 1 (Administration) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEFINITION OF COST OF ABATEMENT

WHEREAS, in the course of processing and abating nuisances, the City often incurs substantial costs, including staff time, administrative fees and costs, and court fees and costs, and outside counsel, consultant and/or contractor fees; and,

WHEREAS, although the Municipal Code currently allows for recovery of “costs of abatement” in nuisance actions through imposition by special assessment, lien, or a lawsuit against the persons maintaining the nuisance, the Municipal Code does not define such costs; and,

WHEREAS, amendment of the Municipal Code is needed to define such costs to allow the City full recovery of the financial impact of remedying nuisances under its ordinances.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

Section 1. Section 1.18.055 (Cost of Abatement - Definition) of Chapter 1.18 (Abatement of Nuisances) of Title 1 (Administration) is hereby added to read as follows:

- 1.18.55 Costs of Abatement – Definition. For purposes of this chapter, “cost of abatement” shall include, but is not limited to:
1. Any staff time spent to process, prosecute, or abate said nuisance;
 2. Any costs incurred to process, prosecute, or abate said nuisance;
 3. Any staff time or costs spent to impose a lien or special assessment against the land upon which the nuisance is maintained to recover such time or costs;
 4. Any costs or fees for consultants and/or contractors to perform such tasks; and
 5. Any costs or fees for attorneys to perform such tasks. Recovery of reasonable attorneys' fees shall be limited to those obtainable by the prevailing party, and only in those individual actions or proceedings in which the city elects, at the initiation of that action or proceeding, to seek recovery of its own attorneys' fees.

Section 2. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 3rd Day of March 2004, and was finally adopted at a regular meeting of said Council on the 17th Day of March 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1657, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th Day of March 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT
MEETING DATE: MARCH 17, 2004

Agenda Item # 12

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1658, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-03-13 FOR APPLICATION MP 02-15: MISSION VIEW DRIVE-MISSION RANCH (APN 728-32-008 & 009)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1658, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On March 3, 2004, the City Council Introduced Ordinance No. 1658, New Series, with amendments to the Residential Development Agreement in Paragraph 14(i)(xiii) [related to walkways], by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1658, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MORGAN HILL APPROVING
DEVELOPMENT AGREEMENT APPLICATION DA-
03-13 FOR APPLICATION MP 02-15: MISSION VIEW
DRIVE-MISSION RANCH (APN 728-32-008 & 009).**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAINS AS FOLLOWS:**

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 03-17a & b, adopted May 27, 2003, has awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 02-15: Mission View-Mission Ranch	38 Single-Family Homes

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 3rd Day of March 2004, and was finally adopted at a regular meeting of said Council on the 17th Day of March 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1658, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th Day of March 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT
MEETING DATE: MARCH 17, 2004

Agenda Item # 13

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1659, NEW SERIES, AS AMENDED

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A RESIDENTIAL PLANNED DEVELOPMENT AND PRECISE DEVELOPMENT PLAN FOR A 90-UNIT SINGLE-FAMILY PROJECT LOCATED AT THE NORTHEAST CORNER OF COCHRANE ROAD AND PEET ROAD (APNs 728-34-002 & -003) (ZA-03-15: PEET - LUPINE)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1659, New Series, as amended, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On March 3, 2004, the City Council Introduced Ordinance No. 1659, New Series, as amended, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing these applications.

ORDINANCE NO. 1659, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A RESIDENTIAL PLANNED DEVELOPMENT AND PRECISE DEVELOPMENT PLAN FOR A 90-UNIT SINGLE-FAMILY PROJECT LOCATED AT THE NORTHEAST CORNER OF COCHRANE RD AND PEET RD (APNs 728-34-002 & -003) (ZA-03-15: PEET - LUPINE)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration was filed with the associated annexation application.
- SECTION 4.** The City Council finds that the proposed RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 5.** The City Council hereby approves a precise development plan as contained in that certain series of documents date stamped January 21, 2004, on file in the Community Development Department, entitled "Alicante" prepared by MH Engineering. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 6.** Approval of the Alicante Estates RPD and precise development plan shall allow the deviations identified in the list of Approved Deviations attached hereto as Exhibit "A", and by this reference incorporated herein.
- SECTION 7.** Two modified setback dwellings are allowed in Phase 1 (FY 2004-05) of the project, and four modified setback dwellings are allowed in Phase 2 (FY 2005-06) if building permits are obtained by June 30, 2005. Additional modified setback dwellings are allowed in future phases as identified on the precise development plan on file at the Community Development Department, subject

to the extension of Ordinance No. 1641. In the event the City Council does not extend Ordinance No. 1641, the modified setback dwellings proposed in Phase 3 and beyond shall be constructed as physically attached units.

SECTION 8. The project shall comply with the provisions of Ordinance No. 1641 for the modified setback dwellings.

SECTION 9. With the exception of the deviations allowed under Sections 6 through 8 of this Ordinance, buildout of the Alicante Estates project shall comply with the site development standards of the R-1(12,000) zoning district. Any additions/modifications to the approved building plans shall also comply with the site development standards of the R-1(12,000) zoning district.

SECTION 10. The approved project shall be subject to the following conditions:

1. A street connection to Cochrane Road shall be provided with full street improvements (curb, gutter and sidewalk), as identified on the precise development plan. At the time the adjacent parcel to the north (radio station site) is developed, or the project extension of St. Katherine Drive to St. Marks Avenue is completed, the City shall re-evaluate the need for the Cochrane Road connection.
2. If it is determined that the connection is no longer needed, the following conditions shall apply:
 - a. The project developer shall be responsible for the closure of the connection and redesign of the subject roadway.
 - b. The paved area between Cochrane Road and the end of the subject street shall be replaced with landscaping and an irrigation system by the project developer. Landscaping shall be consistent with the Landscape Plan approved by the Architectural Review Board.
 - c. The Alicante Estates Homeowner's Association (HOA) shall accept and maintain the additional landscape area as part of the project common areas. The Alicante Estates CC&Rs shall include language requiring compliance with this condition.
 - d. Prior to Final Map Approval, the design of the roadway shall be reviewed and approved by the Public Works Department. If required by the Public Works Department, the developer shall offer the necessary right-of-way dedication for the cul-de-sac bulb for future closure of the roadway.

SECTION 11. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 12. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced, as amended, at the regular meeting of the City Council of the City of Morgan Hill held on the 3rd Day of March 2004, and was finally adopted at a regular meeting of said Council on the 17th Day of March 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1659, New Series, as amended, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th Day of March 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A APPROVED DEVIATIONS

Phase	Lot #	Front	Left	Right	Rear	Lot Size	Comments
1	1	23.3	--	--	--	--	
1	4	20	--	--	--	--	
1	6	20	--	--	--	--	
1	9	20	10	--	--	--	
1	10	20	--	--	--	--	
1	11	23.8	--	3	--	5,570 sf	BMR
1	12	24	--	--	3	--	MR
1	14	20	10	--	--	--	
2	1	24	--	--	3	--	MR
2	2	23.4	--	3	--	5,723 sf	BMR
2	4	20	--	--	--	--	
2	5	20	--	--	--	--	
2	8	20	--	--	--	--	
2	9	20	--	--	--	--	
2	10	20	--	--	--	--	
2	11	23.8	--	3	--	5,570 sf	BMR
2	12	24	--	--	3	--	MR
2	14	20	--	--	--	--	
3	5	20	--	--	--	--	
3	7	30.7	--	--	3	--	MR
3	8	18.7	--	3	--	5,992 sf	BMR
3	9	20	--	--	--	--	
3	10	20	--	--	--	--	
3	11	16	--	--	--	--	
3	12	20	--	--	--	--	

Phase	Lot #	Front	Left	Right	Rear	Lot Size	Comments
Future	F-4	21	--	--	--	--	
Future	F-5	20	--	--	--	--	
Future	F-11	--	--	--	3	--	MR
Future	F-12	--	--	3	--	--	BMR
Future	F-13	20	--	--	--	--	
Future	F-16	--	6	3	--	5,552 sf	BMR
Future	F-17	15	--	--	3	--	MR
Future	F-21	20	--	--	--	--	
Future	F-23	20	--	--	--	--	
Future	F-25	20	--	--	--	--	
Future	F-27	20	--	--	--	--	
Future	F-30	20	--	--	--	--	
Future	F-32	16.2	--	3	--	--	BMR
Future	F-33	24.6	--	--	3	--	MR
Future	F-34	--	10	--	--	--	
Future	F-35	20	--	--	--	--	
Future	F-37	20	--	--	--	--	
Future	F-38	15.6	--	3	--	5,040 sf	BMR
Future	F-39	--	--	--	3	--	MR
Future	F-40	20	--	10	--	--	
Future	F-41	20	--	--	--	--	
Future	F-43	20	--	--	--	--	
Future	F-45	20	--	--	--	--	
Future	F-47	20	--	--	--	--	
Future	F-48	20	--	3	--	5,520 sf	BMR
Future	F-49	--	--	--	3	--	MR

Notes:

1. Setback dimensions are identified in feet.
2. Wing walls shall be a minimum of 3 feet from property lines.
3. BMR and MR units shall comply with Ordinance No. 1641 for modified setback dwellings.
4. Alternate Custom Lots for Phases 2 and beyond shall be designated in writing and submitted to the Planning Division prior to tentative map approval of the appropriate phase of development. Custom lot units shall meet all site development standards of the R-1(12,000) zoning district.
5. Project Breakdown: Phase 1 = 14 units (11 Measure P units, plus 3 replacement units); Phase 2 = 15 Measure P units; Phase 3 = 12 Measure P units; Future Phases = 49 Measure P units; Total Project = 90 homes (including 9 BMR and 9 MR units)
6. Only those deviations listed above are approved for the RPD. Setbacks and lot sizes not specifically called out shall comply with the site development standards of the R-1(12,000) zoning district.
7. Future building additions are prohibited in any yard (front, rear, side) for which a reduced setback was approved by this RPD, unless the additions comply with the site development standards of the R-1(12,000) zoning district.



CITY COUNCIL STAFF REPORT
MEETING DATE: MARCH 17, 2004

Agenda Item # 14

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1660, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNs 728-34-002 & -003) (DA-03-12: PEET - LUPINE)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1660, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On March 3, 2004, the City Council Introduced Ordinance No. 1660, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing these applications.

ORDINANCE NO. 1660, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNs 728-34-002 & -003) (DA-03-12: PEET - LUPINE)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution Nos. 03-17a and 03-17b, adopted May 27, 2003, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-12: Peet – Lupine Investors/Borello	11 units (Fiscal Year 2004-05)
	15 units (Fiscal Year 2005-06)
	12 units (Fiscal Year 2006-07)

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 3rd Day of March 2004, and was finally adopted at a regular meeting of said Council on the 17th Day of March 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1660, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 17th Day of March 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2004

Agenda Item # 15

Prepared By:

**Assistant to the City
Manager**

Submitted By:

City Manager

EXTENSION OF FIRE SERVICES CONTRACT

RECOMMENDED ACTION(S):

1. Authorize the City Manager and City Attorney to proceed in developing a final agreement with the Santa Clara County Fire Department.
2. Direct staff to develop a fee schedule for fire prevention services that achieves full cost recovery for the services provided.

EXECUTIVE SUMMARY: The City has contracted with the Santa Clara County Fire Department for fire suppression, emergency medical response, hazardous materials control, and fire inspection services since 1995. The ten year agreement that the City entered into with County Fire is due to expire on July 30, 2005. The City has been well served throughout the term of this agreement.

As recommended in the City's Fire Master Plan and further recognized in LAFCO's recent review of fire protection services, Morgan Hill will ultimately be best served by a more coordinated or unified approach that considers the entire South County area. Given the complexity and length of time required to develop a more coordinated approach as well as the fast approaching expiration date of the City's current agreement, the Council authorized staff to negotiate a short-term contract extension with County Fire at the September 24, 2003 Council meeting.

Staff has negotiated a tentative agreement with County Fire for a short term extension of the current agreement. The proposed extension includes a slight increase in contract costs, a new formula for making annual cost adjustments to the contract, no changes in fire station staffing, and slight changes to inspection services. The language changes to the agreement we have discussed are attached along with the original agreement. Staff recommends that the City Manager and City Attorney be authorized to prepare a final extension agreement for presentation to the Council and the Board of Supervisors.

In addition to negotiating with County Fire, the Council also authorized staff to enter into negotiations with the South Santa Clara County Fire Protection District to address services in the southern third of the City. Now that negotiations with County Fire are reaching their end, staff will renew our preliminary conversations with the Southern District and will report back to the Council in the coming months.

In the course of negotiations with County Fire, staff has determined that the inspection fees currently charged for plan checking, fire sprinklers, and hazardous materials regulation have not kept pace with the cost of providing these services - nor the fees charged by other communities. We recommend that the Council direct staff to develop a proposed fee schedule that achieves full cost recovery for these services consistent with the Council's adopted approach to other Community Development fees.

FISCAL IMPACT: The City is scheduled to pay \$3,745,220 for County Fire's services in the current fiscal year and would likely pay approximately \$3.9 million in FY 04-05. The proposed contract extension increases this amount to approximately \$4.2 million annually for the fifteen months beginning July 2004 and would increase this amount by up to 5% in October 2005 and up to 7% in October 2006. This increase is needed because County Fire's costs have increased more during the past nine years than the City's payments have increased. However, this increase is less than the increase anticipated in the City's Five Year Financial Forecast that is included in the City's adopted Sustainable Budget Strategy.

Proposed Changes to the Fire and Emergency Medical Services Agreement between the City of Morgan Hill and the Santa Clara County Central Fire Protection District

2.04 J The DISTRICT shall provide occupancy inspections for group “A”, “E”, “I”, “H”, “R-1”, “R-2”, and “R-6” occupancies as defined in the California Building Code, on at least an annual basis. For group “B” and “M” occupancies, the DISTRICT may implement an occupant self-inspection program or conduct inspections as often as determined necessary by the Fire Chief.

4.01 A. The DISTRICT further agrees to provide, as a minimum, first-responder paramedic engine service to the City.

9.01 Term and Effective Date of Agreement. The term of this Agreement shall be from July 1, 2004 through September 30, 2007.

9.02 Renewal. The contract shall expire at the expiration of this Agreement. There is no automatic renewal clause included in this Agreement.

10.01 Terms of Payment. Commencing on July 1, 2004 the CITY shall owe to the DISTRICT annual operating costs in the amount of four million one hundred ninety-four thousand three hundred seventy-four dollars (\$4,194,374) subject to any deductions or offsets provided for in this Agreement. This rate will also remain in effect from July 1, 2005 through September 30, 2005. Commencing on October 1, 2005 and each October annually the CITY shall owe to the DISTRICT the operating costs increased by the formula set forth in 10.02

10.02 Increases in the Cost of Services. The parties agree that annual increases to fire and emergency medical services costs shall be limited to the “arithmetic mean” (average) of the percent growth of the following three indices: (1) the February to February, San Francisco-Oakland-San Jose, All Urban, All Items Consumer Price Index, (2) the average annual cost of living increase in total compensation provided to all fire suppression nonmanagement employees of DISTRICT following a calculation formula agreed and attached hereto as exhibit “D” and incorporated herein by reference, and (3) the Local Secured Values for the total parcels in the city of Morgan Hill as reported by the Santa Clara County Controllers Office each July. The DISTRICT shall submit a request for an increase in the cost of services to the CITY by April 15 of each fiscal year for the increase in the cost of services that will be effective on the following October 1. For purposes of measuring the growth in Local Secured Values, the parties will rely on the two most recent fiscal years for which the data are available from the County Controller. As of fiscal year 2003, the document that reports the Local Secured Value is the ATA-IA16-ATAM544 report. However, if any index in this paragraph has a negative growth, the value of that index (indices) will be zero for the purposes of computing the arithmetic mean for that fiscal year. If all three indices have a negative growth, the percent increase will be zero, i.e. at no time

will the annual base amount go down as a result of the formula described in this section. The maximum increase that can be applied for the service period of October 1, 2005 through September 30, 2006 is 5%. The maximum increase that can be applied for the service period of October 1, 2006 through September 30, 2007 is 7%.

10.05 Additional Cost per Fire Station. In the event an additional fire station is needed to provide adequate fire and emergency medical services to the CITY, the additional operating costs of providing services resulting from the new fire station consisting of one (1) three-person company shall be \$2,000,000 plus the annual average increases as calculated in Section 10.02 for the number of years this Agreement has been effective.

10.06 Fire Impact Fees on New Development. DISTRICT is submitting a proposal for \$250,000 to replace the portable Fire Prevention Offices at El Toro Fire to allow improved access to the public for plan review and conferences. The meeting rooms would also be available for community meetings.

10.07 Regional Services. The South County Fire Protection District services the southern portion of Morgan Hill under an automatic aid agreement. Should the CITY contract for services with the South County Fire District, the hydrant and inspection workload for the first-due area will be included in the contract services.

12.01 Termination for Cause. Without limiting any other remedy which may be available, this Agreement may only be terminated for a material breach after utilizing the Arbitration Review Board procedure in paragraph 13.01.

12.02 Termination without Cause. No earlier than the second anniversary date of this Agreement (September 2006 to give termination notice), CITY and DISTRICT can mutually agree to terminate this agreement without cause.



CITY COUNCIL/REDEVELOPMENT AGENCY STAFF REPORT

MEETING DATE: March 17, 2004

Agenda Item # 16

Approved By:

BAHS Director

Submitted By:

City Manager

AFFORDABLE HOUSING STRATEGY WORKPLAN

RECOMMENDED ACTION(S) Approve the workplan and direct staff to implement its recommendations

EXECUTIVE SUMMARY:

In August 2003, the City Council/Agency adopted the Affordable Housing Strategy (Strategy) which outlined a number of recommended initiatives based on a needs assessment that was conducted for the Agency. These initiatives call for the development of new programs or the continuation of existing programs to ensure that the Agency achieves its housing goals. These initiatives were prioritized as follows:

Top Priority Programs:

- Affordable new ownership housing construction
- Homebuyers assistance
- Affordable new rental housing construction and rehabilitation
- Transit oriented development/downtown affordable housing development

Lower Priority Programs:

- Special needs housing
- Other housing activities

The purpose of this workplan is to: 1) outline the activities that are taking place by the Agency to address each of these priorities, 2) provide a time line for implementation, and 3) identify the funding available for the recommended programs/projects. The Strategy allocates about \$20.1M for programs/projects and administrative costs from FY04-05 to FY09-10. The key workplan recommendations are as follows:

- Conduct a workshop to discuss the Royal Court townhouse/apartment project.
- Discuss and approve the program guidelines for a home buyer assistance program (see Attachment A of the workplan); if approved, recommend budgeting \$750,000 in 20% Housing Setaside funds for FY04-05.
- Continue with actions targeting the rehabilitation of selected rental properties.
- Continue with the Downtown Request For Concepts (RFC) process to further explore the feasibility of transit oriented development (TOD).
- Complete the rehabilitation of the domestic violence shelter.
- Continue discussions with property owner to secure property for a Habitat For Humanity self-help project.

FISCAL IMPACT: Depends on the project and program, but the BAHS FY03-04 Housing Division budget did allocate funds to implement some of the projects/programs identified within the Strategy.



**CITY COUNCIL/
REDEVELOPMENT AGENCY**
MEETING DATE: March 17, 2004

SAFEWAY TRAFFIC SIGNAL

RECOMMENDED ACTION(S): 1) Adopt Morgan Hill Redevelopment Agency Resolution authorizing the transfer of \$25,000 to the City of Morgan Hill for the purchase and installation of a traffic signal at the intersection of Tennant Avenue and Church Street benefiting the Tennant Station Shopping Center; 2) Adopt City Council Resolution accepting \$25,000 from the Redevelopment Agency for the above referenced traffic signal; 3) Approve a Reimbursement Agreement between the City of Morgan Hill and Safeway Inc. to authorize the City to reimburse Safeway Inc., in the amount of \$25,000 for a portion of the total cost of the traffic signal; and 4) direct the City Manager to do everything necessary to implement the agreement.

EXECUTIVE SUMMARY: Safeway recently began construction of a new 54,799 square foot super market and a gas station at the Tennant Station Shopping Center. As a condition for approval of the Conditional Use Permit, Safeway was required to install a traffic signal along Tennant Avenue to mitigate the traffic impacts of the Shopping Center on the surrounding roadways. The Planning Commission, with staff's recommendation, required Safeway to install the signal at the intersection of Tennant Avenue and Church Street. This necessitated that Safeway install a "four-way" signal instead of a three-way signal. Staff recommends compensating Safeway for the approximate cost of signaling the "extra" leg of the intersection, estimated at \$25,000.

The new Safeway store at Tenant Station is expected to be instrumental in revitalizing the shopping center, after existing over nine years without a major anchor.

The attached resolutions for approval make the necessary findings under Redevelopment Law.

FISCAL IMPACT: \$25,000 has been budgeted in Fund 317 8010 for this expenditure.

Agenda Item # 17

Prepared By:

BAHS Manager

Approved By:

BAHS Director

Submitted By:

**City Manager/Executive
Director**

RESOLUTION NO. MHRA ____

A RESOLUTION OF THE MORGAN HILL REDEVELOPMENT AGENCY TRANSFERRING \$25,000 TO THE CITY OF MORGAN HILL FOR THE PURCHASE AND INSTALLATION OF A TRAFFIC SIGNAL AT CHURCH STREET AND TENNANT AVENUE AND BENEFITTING THE TENNANT STATION SHOPPING CENTER

RECITALS:

A. For over nine years, the Tennant Station Shopping Center has existed in an economically blighted condition because of the lack of a major anchor tenant.

B. On June 11, 2002, the Morgan Hill Planning Commission approved Conditional Use Permit No. 02-38 (the "CUP") for the construction of a 12-pump fuel center with a kiosk as part of a larger project to construct a 54,799 square foot Safeway grocery store as the anchor tenant, and a 7,000 square foot office building within the existing Tennant Station Shopping Center (the "Shopping Center"). These improvements will assist in the revitalization of the Shopping Center.

C. The Shopping Center is located in the Ojo de Agua Community Development Project (the "Project Area").

D. As a condition for the CUP approval, the applicant, Safeway, Inc. ("Safeway") was required to install and construct a new traffic signal at the intersection of Church Street and Tennant Avenue (the "Signal").

E. The Signal is estimated to cost approximately \$170,000.

F. Because of project budget constraints, Safeway has requested financial assistance in the amount of \$25,000 from the Redevelopment Agency (the "Agency") to pay for a portion of the cost of purchasing and installing the Signal.

G. Health and Safety Code Section 33445 provides that a Redevelopment Agency may, with the consent of the City Council, pay all or a part of the cost of the installation and construction of improvements which are publicly owned, such as a traffic signal.

H. The Signal will be publicly owned and will benefit the Project Area by improving traffic circulation.

I. Because of benefits to the Agency, the Agency would like to provide financial assistance to Safeway for the purchase and installation of the Signal by transferring the funds to the City for reimbursement to Safeway.

NOW THEREFORE, THE MORGAN HILL REDEVELOPMENT AGENCY HEREBY
FINDS, DETERMINES, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. The Project Area is an area in which the combination of conditions of blight is so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization of the area to such an

extent that it constitutes a serious physical, social and economic burden on the community which cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment. Conditions of blight in the Project Area include a lack of adequate public improvements and facilities, including traffic signals.

The Signal will be located in the Project Area. The Signal, which is required to be purchased and installed by Safeway, will contribute to the revitalization of the Tennant Station Shopping Center to serve the residents and taxpayers of the City and the Agency's Project Area. This will help create jobs and reduce crime and juvenile delinquency, all for the benefit of the health, safety and welfare of residents and taxpayers. The Signal will assist in remedying a lack of adequate public improvements and will thereby improve access to the Project Area and mitigate traffic congestion and safety hazards. This in turn will assist in eliminating a factor which prevents or substantially hinders the economically viable use or capacity of buildings or lots and will encourage private-sector investment in the Project Area, thereby facilitating the redevelopment of the Project Area, all for the health, safety and welfare of the residents and taxpayers of the Project Area.

Section 2. Pursuant to Health and Safety Code Section 33445, the Agency proposes to pay for a part of the cost of the purchase and installation of the Signal, in an amount not to exceed \$25,000. No moneys of the City are currently available to pay for a portion of the cost of the Signal due to other funding commitments and budgetary constraints. Traditional methods of financing, such as the issuance of general obligation bonds by the City and/or special taxes, are unavailable as a practical matter because of the extraordinary majority voter approval requirements of two-thirds of the electorate. Assessment financing is also subject to a majority protest.

Section 3. The Agency hereby finds and determines that based upon the foregoing and other information presented to it: (a) the Signal is of benefit to the Project Area and to the immediate neighborhood in which the project is located, (b) the payment of funds for a part of the cost of the Signal assists in the elimination of one or more blighting conditions inside the Project Area which are caused by inadequate public improvements and thereby encourages private sector investment in the Project Area, (c) the payment of funds for a part of the cost of the Signal is consistent with the Agency's implementation plan adopted pursuant to Health and Safety Code Section 33490; and (d) no other reasonable means of financing the Signal is available to the City as this signal is not included in our Traffic Impact Mitigation Report and, therefore, we have no City funds available or uncommitted at this time to fund this signal.

Section 4. The Agency hereby approves payment by the Agency for a portion of the Signal in an amount not to exceed \$25,000 from any revenues of the Agency lawfully available therefor.

Section 5. The Agency hereby approves the transfer of these funds (\$25,000) to the City for reimbursement to Safeway.

Section 5. The officers and staff of the Agency are hereby authorized to do all acts and things which may be required of them by this Resolution, or which may be necessary or desirable in carrying out the intent of this Resolution, including, without limitation, to execute agreements and other documents.

PASSED AND ADOPTED by the Morgan Hill Redevelopment Agency at a Special Meeting held on the 17th Day of March, 2004 by the following vote:

AYES: **AGENCY MEMBERS:**
NOES: **AGENCY MEMBERS:**
ABSTAIN: **AGENCY MEMBERS:**
ABSENT: **AGENCY MEMBERS:**

∞ CERTIFICATION ∞

I, IRMA TORREZ, AGENCY SECRETARY, do hereby certify that the foregoing is a true and correct copy of Resolution No. MHRA- adopted by the Morgan Hill Redevelopment Agency at a Special Meeting held on March 17, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, AGENCY SECRETARY

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ACCEPTING \$25,000 FROM THE REDEVELOPMENT AGENCY OF THE CITY OF MORGAN HILL FOR THE PURCHASE AND INSTALLATION OF A TRAFFIC SIGNAL AT CHURCH STREET AND TENNANT AVENUE AND BENEFITTING THE TENNANT STATION SHOPPING CENTER

WHEREAS, the Tennant Station Shopping Center has existed in an economically blighted condition for the past nine years because of the lack of a major anchor tenant.

WHEREAS, on June 11, 2002, the Morgan Hill Planning Commission approved Conditional Use Permit No. 02-38 (the "CUP") for the construction of a 12-pump fuel center with a kiosk as part of a larger project to construct a 54,799 square foot Safeway grocery store as the anchor tenant, and a 7,000 square feet office building within the existing Tennant Station Shopping Center (the "Shopping Center"), which improvements are intended to revitalize the Shopping Center; and,

WHEREAS, the Shopping Center is located in the Ojo de Agua Community Development Project (the "Project Area"); and,

WHEREAS, as a condition for the CUP approval, the applicant, Safeway, Inc. ("Safeway") is required to install and construct a new traffic signal at the intersection of Church Street and Tennant Avenue (the "Signal"); and,

WHEREAS, the Signal is estimated to cost approximately \$170,000; and,

WHEREAS, because of project budget constraints, Safeway has requested financial assistance in the amount of \$25,000 from the Redevelopment Agency (the "Agency") to pay for a portion of the cost of purchasing and installing the Signal; and,

WHEREAS, Health and Safety Code Section 33445 provides that a Redevelopment Agency may, with the consent of the City Council, pay all or a part of the cost of the installation and construction of improvements which are publicly owned, such as a traffic signal.

WHEREAS, the Signal will be publicly owned and will benefit the Project Area and the Morgan Hill community; and,

WHEREAS, because of the benefits to the Agency it would like to provide, and the City would like to accept, financial assistance to Safeway for the purchase and installation of the Signal by transferring the funds to the City for reimbursement to Safeway.

WHEREAS, the Project Area is an area in which the combination of conditions of blight is so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical, social and economic burden on the community which cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment. Conditions of blight in the Project Area include a lack of adequate public improvements and facilities, including traffic signals. The Signal will be located in the Project Area. The Signal, located in the Project Area, is required to be purchased and installed by Safeway, and will contribute to the revitalization of the Tennant Station Shopping Center to serve the residents and taxpayers of the City and the Agency's Project Area. This will help create jobs, and reduce crime and juvenile delinquency, all for the benefit of the health, safety and welfare of such residents and taxpayers. The Signal will assist in remedying a lack of adequate public improvements and will thereby improve access to the Project Area and mitigate traffic congestion and safety hazards. This in turn will assist in eliminating a factor which prevents or substantially hinders the economically viable use or capacity of buildings or lots and will encourage private-sector investment in the Project Area, thereby facilitating the redevelopment of the Project Area, all for the health, safety and welfare of the residents and taxpayers of the Project Area.

WHEREAS, pursuant to Health and Safety Code Section 33445 the Agency proposes to pay for a part of the cost of the purchase and installation of the Signal in an amount not to exceed \$25,000. No moneys of the City are currently available to pay for a portion of the cost of the Signal due to other funding commitments and budgetary constraints. Traditional methods of financing, such as the issuance of general obligation bonds by the City, and/or special taxes, are unavailable as a practical matter because of the extraordinary majority voter approval requirements of two-thirds of the electorate. Assessment financing is also impractical because it is subject to a majority protest.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The City hereby finds and determines that based upon the foregoing and other information presented to it: (a) the Signal is of benefit to the Project Area and to the immediate neighborhood in which the project is located, (b) the payment of funds for a part of the cost of the Signal assist in the elimination of one or more blighting conditions inside the Project Area which are caused by inadequate public improvements and thereby encourages private sector investment in the Project Area, (c) the payment of funds for a part of the cost of the Signal is consistent with the Agency's implementation plan adopted pursuant to Health and Safety Code Section 33490; and (d) no other reasonable means of financing the Signal is available to the City as the signal is not included in our Traffic Impact Fee mitigation report and therefore there are no City funds in our mitigation fee fund, nor are there funds which are not otherwise committed, and budgetary constraints do not allow funding at this time.

SECTION 2. The City hereby accepts the transfer of funds (\$25,000) from the Agency to the City for reimbursement to Safeway, which the City will reimburse pursuant to a Reimbursement Agreement to be entered into between the City and Safeway.

SECTION 3. The officers and staff of the City are hereby authorized to do all acts and things which may be required of them by this Resolution, or which may be necessary or desirable in carrying out the intent of this Resolution, including, without limitation, to execute agreements and other documents.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 17th Day of March, 2004 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🔑 CERTIFICATION 🔑

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on March 17, 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

REIMBURSEMENT AGREEMENT

(SAFEWAY, INC.)

THIS AGREEMENT is made this ____ day of _____, 2004, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and Safeway Inc., a Delaware corporation ("DEVELOPER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to City Council approval on March 17, 2004.
2. CITY desires the DEVELOPER to furnish a traffic signal for the Safeway supermarket project at the Tennant Station Shopping Center located at the intersection of Church Street and Tennant Avenue.
3. DEVELOPER agrees to, at its own cost and expense, install these improvements ("IMPROVEMENTS").
4. DEVELOPER requests that CITY reimburse it for a portion of the cost incurred for IMPROVEMENTS.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This Agreement covers time from the date of building permit issuance for the project until the amount of reimbursement has been paid to DEVELOPER. This Agreement shall terminate in two years or upon full reimbursement, whichever occurs first.
2. **Scope of Project.** The Project scope consists of the construction of a new 54,799 square foot Safeway supermarket at the Tenant Station shopping center located at the intersection of Tennant Avenue and Monterey Road and as approved by Zoning Amendment 01-20 and Site and Architectural Review 01-30.
3. **IMPROVEMENTS Provided.** IMPROVEMENTS performed by DEVELOPER consist of the following: a new three-way traffic signal at the intersection of Tennant Avenue and Church Street as approved by Conditional Use Permit 02-03.
4. **Compensation.** DEVELOPER will expend the following amount in construction of IMPROVEMENTS:

- 4.1 Amount. Estimated at one-hundred-seventy-thousand dollars (\$170,000).
- 4.2 Portion to be Reimbursed by CITY. Twenty-five-thousand dollars (\$25,000).
- 4.3 Payment. CITY shall reimburse DEVELOPER upon completion of the improvements to CITY's satisfaction.
- 4.4 Records of Expenses. DEVELOPER shall keep records in which complete and correct entries are made of all direct and indirect construction costs, including overhead, related to IMPROVEMENTS. These records will be made immediately available to CITY upon request.
- 4.5 Termination. CITY shall give DEVELOPER thirty (30) days written notice of termination, state the reasons therefore, and provide DEVELOPER thirty (30) days to cure the reason for such termination. All notices shall be delivered or mailed in accordance with Paragraph 11, below.

5. **Insurance Requirements.**

- 5.1 Commencement of Work. DEVELOPER shall not commence work under this Agreement until it has obtained CITY approved insurance. All insurance required by this Agreement shall be carried only by responsible insurance companies licensed to do business in California and shall name as additional insured CITY, its elected officials, officers, employees, agents and representatives. All policies shall contain language to the effect that: (1) the insurer waives the right of subrogation against CITY and CITY'S elected officials, officers, employees, agents, and representatives; (2) insurance shall be primary noncontributing and any other insurance carried by the CITY shall be excess over such insurance, and (3) policies shall provide that it shall not be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail. DEVELOPER shall furnish CITY with copies of all such policies or certificates promptly upon receipt.
- 5.2 Workers Compensation Insurance. DEVELOPER and all subcontractors shall maintain Worker's Compensation Insurance, if applicable.
- 5.3 Insurance Amounts. DEVELOPER shall maintain comprehensive, broad form, general public liability and automobile insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage.

6. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

7. **Non-Discrimination**. DEVELOPER covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, sexual orientation, national origin, or ancestry, in any activity pursuant to this Agreement.
8. **Independent Contractor**. It is agreed to that DEVELOPER shall act and be an independent contractor and not an agent or employee of CITY.
9. **Compliance with Law**. DEVELOPER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
10. **Conflict of Interest and Reporting**. DEVELOPER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
11. **Notices**. All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.
- | | | |
|----|---|---|
| a. | Address of DEVELOPER is as follows: | With copy to: |
| | Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Attention: NorCal Construction
Re: 1891, Morgan Hill, CA | Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229
Attention: Real Estate Law
Re: 1891, Morgan Hill, CA |
| b. | Address of CITY is as follows: | With a copy to: |
| | Public Works Director
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037 | City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037 |
12. **Licenses, Permits and Fees**. DEVELOPER shall obtain a **City of Morgan Hill Business License**, all permits, and licenses as may be required by this Agreement.
13. **Time of Essence**. Time is of the essence in the performance of this Agreement.
14. **Limitations Upon Subcontracting and Assignment**. Neither this Agreement or any portion shall be assigned by DEVELOPER without prior written consent of CITY.
15. **Authority to Execute**. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

16. **Indemnification.** DEVELOPER agrees to protect, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by DEVELOPER, DEVELOPER'S agents, officers, employees, subcontractors, or independent contractors hired by DEVELOPER. The only exception to DEVELOPER'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by DEVELOPER.

17. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by subsequent mutual written agreement executed by CITY and DEVELOPER.

18. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Santa Clara County Superior Court.

19. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

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20. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision affected only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

CITY OF MORGAN HILL

**"DEVELOPER"
(SAFEWAY, INC.)**

By: _____
J. Edward Tewes, City Manager

By: _____
Print Name and Title:

Date: _____

Date: _____

By: _____
Jack Dilles, Risk Manager

Date: _____

ATTEST:

APPROVED AS TO FORM:

Irma Torrez, City Clerk

Helene Leichter, City Attorney

Date: _____

Date: _____

(City Attorney file name: Aggrei3.4)

**CITY OF MORGAN HILL
JOINT SPECIAL CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – MARCH 3, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:01 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Members Chang (arrived at 6:09 p.m.) and Sellers (arrived 6:04 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action and Redevelopment Agency Action

CLOSED SESSION:

Mayor/Chair Kennedy announced the below listed closed session item:

1.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Legal Authority:	Government Code section 54956.9(a)
Case Name:	Hacienda Valley Mobile Estates v. City of Morgan Hill
Case Number:	Santa Clara County Superior, Case No. CV 80-7708

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:00 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 7:03 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – MARCH 3, 2004**

CALL TO ORDER

Mayor/Chairman/President Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency/Commission Members Carr, Tate; Mayor/Chairman/President Kennedy
Late: Council/Agency/Commission Members Chang (arrived at 6:09 p.m.) and Sellers (arrived at 6:05 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency/Commission Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

Mayor/Chairman Kennedy announced the following closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	4

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

Mayor/Chairman/President Kennedy reconvened the meeting at 7:00 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that direction was given to initiate litigation and that the action, defendants, and other particulars shall, once formally commenced, be disclosed to any person, upon inquiry.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman/President Kennedy, John Kennett led the Pledge of Allegiance.

CITY COUNCIL REPORT

Mayor Kennedy reported on the Urban Limit Line (ULL) Committee. He indicated that the Committee has been meeting for some time and that a fair amount of progress has been made in establishing an urban limit line around approximately 75% of the City. One area of particular difficulty has been the southeast quadrant/portion of the City along Tennant Avenue from Highway 101 to the east foothills. He indicated that a five member ULL Committee has been established to look at a master plan for this area. He clarified that the urban limit line can be considered as an ultimate growth limit line (e.g., 50 year growth line). He stated that the City also has an urban growth boundary line which is a 20 year line that is closer to the City limits. He felt that both lines will work in conjunction with the City's general plan as well as Measure P/Measure C, the City's residential growth control measure. He thanked the Council Subcommittee (Carr and Tate) who worked on putting Measure C together and successfully getting it passed.

CITY MANAGER REPORT

City Manager Tewes addressed perchlorate and the City's budget. He reported that the February results of the testing of all municipal wells came back at non detect level. He stated that with the passage of Proposition 57, it allows the State of California to issue approximately \$15 billion in bonds to pay for accumulating deficits in prior years, including \$4 billion in the current year. This will help balance the State's budget but this means that the State will have to pay debt service out with future budgets. The Governor has presented a budget for next fiscal year that assumed the passage of Proposition 57. He indicated that the Governor was seeking to transfer \$1.3 billion in revenue from cities and counties to the state. Because of the City's own local economy, he informed the Council that city departments are preparing budget options for Council review. He stated that it is staff's intent to bring the budget recommendation to the Council in mid-May. He said that this will be a difficult process and will present a challenge as it will have impacts on city services and city employees. At the target level of reductions of \$800,000 out of the general fund next year, there is likely to be impact on city jobs. He thanked City employees for their continued professional efforts in identifying options for Council consideration that will give the Council as many choices as possible to balance the impacts on the community and the organization. He stated that the State legislative analyst has released her evaluation of the Governor's proposal, indicating that she does not believe that it is appropriate to shift \$1.3 billion from local governments to the State by shifting property taxes. However, she has a lot of other ideas about how to take money away from local government, including some that would take away from the redevelopment agency. He stated that the next couple of months will be very important to the City's local budget and local services as the decisions being made in Sacramento will impact the City.

CITY ATTORNEY REPORT

City Attorney Leichter indicated that she did not have a report to present this evening.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Vivian Smith stated that St. Louise Regional Hospital is pleased to announce the recruitment of Dr. Nimisha Shah, a board certified internal medicine physician. She indicated that Dr. Shah is experienced in all aspects of primary care, has had experience as an emergency room physician and was chief of staff at a hospital in Kentucky. She stated that her husband, Dr. Devang Shah, is a board certified internal medicine physician as well and that he will be joining his wife in practice after the successful growth of her practice. She addressed the services to be offered by Dr. Shah to residents in Morgan Hill. She stated that Dr. Shah is in the process of obtaining her medical staff privileges at St. Louise Regional Hospital. She encouraged everyone to schedule well visits with Dr. Shah who is anticipated to open her office as early as May 1, 2004, if all goes well.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-9, as follows:*

1. **REGIONAL WATER QUALITY CONTROL BOARD DIRECTION TO OLIN REGARDING TESTING FOR NORTHEAST GROUNDWATER FLOW**
Action: ***Information Only.***
2. **SUBDIVISION APPLICATION, SD-03-14: MISSION VIEW DRIVE-MISSION RANCH**
Action: ***Took No Action.** Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
3. **HOUSING REHABILITATION FOR COMMUNITY SOLUTIONS**
Action: *1. **Approved** an Additional \$45,000 Home Improvement Loan under the Agency's Housing Rehabilitation Loan Program for Community Solutions; 2) **Authorized** the City Manager to Amend a \$33,000 1994 Community Development Block Grant (CDBG) Rehabilitation Loan to Allow the Loan to be Forgiven in 10 years; 3) **Authorized** the City*

Manager to do Everything Necessary to Prepare and Execute Loan Documents and Amend Existing Documents.

4. **VALLEY TRANSPORTATION PLAN, VTP 2030 LOCAL STREETS AND COUNTY ROADS PROGRAM – BUTTERFIELD BOULEVARD EXTENSION FROM TENNANT AVENUE TO WATSONVILLE ROAD**
*Action(s): 1) **Recommended** Butterfield Boulevard Extension from Tennant Avenue to Watsonville Road Project as City's VTP 2030 Local Streets and County Roads Program Project; and 2) **Committed** Future Local Funding Match with Traffic Impact Funds.*
5. **APPROVAL OF FINAL MAP FOR MORGAN LANE PHASE III (TRACT 9551)**
*Action: **Authorized** the Recordation of the Final Map Following Recordation of the Development Improvement Agreement.*
6. **AMENDMENT TO PLANNING DIVISION CONTRACT SERVICES BUDGET FOR UNANTICIPATED ENVIRONMENTAL CONSULTING SERVICES**
*Action(s): 1) **Approved** the Appropriation of \$50,000 from the Community Development Fund Balance (206) to Fund Unanticipated Environmental Consulting Services; and 2) **Authorized** the City Manager to Execute an Amended Contract in an Amount not to exceed \$50,000 with David J. Powers & Associates.*
7. **ADOPT ORDINANCE NO. 1655, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1655, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING A PRECISE DEVELOPMENT PLAN CHANGING THE ZONING FROM R2-3,500 TO R2-3,500 RPD ON A 6.6-ACRE LOT AT THE NORTHEAST CORNER OF SAN PEDRO AVENUE AND BUTTERFIELD BOULEVARD (APN 817-11-061, ZA-03-14: SAN PEDRO-DICONZA).***
8. **ADOPT ORDINANCE NO. 1656, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1656, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-11 FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061)***
9. **MINUTES FOR SPECIAL CITY COUNCIL MEETING OF FEBRUARY 20, 2004**
*Action: **Approved** the Minutes as submitted.*

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Vice-chair Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 10, as follows:*

10. JANUARY 2004 FINANCE & INVESTMENT REPORT

Action: ***Accepted** and **Filed** Report.*

City Council, Redevelopment Agency and Financing Authority Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency/Commission Member Tate and seconded by Mayor Pro Tempore/Vice-chair/Vice-President Sellers, the City Council/Agency Board/Commission unanimously (5-0) **Approved** Consent Calendar Item 11, as follows:*

11. MINUTES FOR SPECIAL AND REGULAR CITY COUNCIL, SPECIAL REDEVELOPMENT AGENCY, AND MORGAN HILL FINANCING AUTHORITY MEETING OF FEBRUARY 18, 2004.

Action: ***Approved** the Minutes as Submitted.*

Action: *It was the consensus of the City Council/Redevelopment Agency **to consider** other business at this time as public hearings, by Council policy, are to be considered at/after 7:30 p.m.*

City Council Action

OTHER BUSINESS:

16. AN ORDINANCE ADDING SECTION 1.18.055 TO THE MUNICIPAL CODE DEFINING RECOVERABLE COSTS OF ABATEMENT FOR NUISANCES – Ordinance No. 1657, New Series

City Attorney Leichter presented the staff report.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1657, New Series, Enacting Section 1.18.055 of the Municipal Code.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1657, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ENACTING SECTION 1.18.055 (Cost of Abatement - Definition) OF CHAPTER 1.18 (Abatement of Nuisances) OF TITLE 1 (Administration) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEFINITION OF COST OF ABATEMENT** by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

17. COYOTE VALLEY SPECIFIC PLAN STAKEHOLDER MEETING

Director of Community Development Bischoff presented the staff report, indicating that in August 2002, the City of San Jose agreed to proceed with the development of a specific plan for the Coyote Valley area. He stated that the City of San Jose recently hired consulting firms to assist in this effort. One of the first phases of the consultants' effort is a meeting with stakeholders. He indicated that the City of Morgan Hill has been identified as a stakeholder. He stated that staff is recommending that one or two council members participate in a meeting with representatives from the City of San Jose and their consulting team to discuss Morgan Hill's concerns regarding development in Coyote Valley. He informed the Council that the Planning Commission has appointed a couple of members to participate in this meeting. He stated that the consultants would like to wrap up stakeholders meetings by March 13, 2004.

Council Member Carr recommended that instead of appointing representatives that the Council invite the consultants to meet with the Council in a workshop as was done with the County Courthouse so that as many Council members who would like, to can participate.

Mr. Bischoff indicated that staff would make arrangements for a Council workshop if it is the Council's desire. He informed the Council that the City of San Jose has already appointed a policy advisory committee as well as a technical advisory committee to work on the Coyote Valley Plan. The City of Morgan Hill formally requested to be a member of the policy advisory committee, noting that this request was not honored by the City of San Jose. However, the City has Planning Commissioner Benich monitoring these meetings although he is not a participant. He informed the Council that staff was successful in having Associate Planner Rebecca Tolentino serving on the technical advisory committee.

Mayor Pro Tempore Sellers indicated that a 6 or 7 p.m. March 10 special meeting could be scheduled, inviting the consultants to address the Council in a workshop setting.

Mayor Kennedy and Council Members Carr, Chang, and Sellers indicated that they were available to meet on March 10.

Action: *It was the consensus of the City Council to **Direct** staff to schedule a special meeting on March 6 in order to participate in a stakeholder's meeting relating to the Coyote Valley Specific Plan.*

18. ECONOMIC DEVELOPMENT SUBCOMMITTEE (EDS) MEMBERSHIP ROTATION

Council Member Tate indicated that the EDS has awarded the police department building right to negotiate and established a direction for the downtown RFP. He felt that this would be a good time to transition the EDS membership. He clarified that it was not his desire to come off this committee but that it is a good time to do so, noting that there is interest among other council members to serve on this subcommittee. He informed the Council that the current EDS recommends that members be transitioned one at a time. Another issue to discuss is whether the current EDS would see the downtown RFP process to conclusion with new economic matters coming before the new EDS members. He felt that Council Member Carr would like to stay on the EDS to provide a transition.

Mayor Kennedy recommended a six month rotation assignment similar to what is done with the Finance & Audit Committee be undertaken. He noted that all Council members are interested in economic development and serving on this subcommittee. He felt that staggering the membership is a good thing to do and that he would support retaining Council Member Carr to keep this continuity and appointing a Council Member to replace Council Member Tate for a six month period with another Council Member coming on board after that period of time.

Council Member Sellers noted that at the end of the year, the Council will be reviewing all committees and how they are structured. He would support undertaking this rotation process and that it may end up being folded into whatever committee structure the Council comes up with at the end of the year. He stated that he would support either a three or six month rotation with the understanding that the Council may have a different structure.

Council Member Carr said that it has been his experience that the issues that the EDS have been dealing with are issues that you have to spend time on. If the Council proceeds with a three month rotation, the Council would have rotated in the middle of developing the process for the downtown RFP as well as the police station RFP. Therefore, the EDS would not have been able to complete these tasks. He noted that when this subcommittee was first put together, it was not to be a standing subcommittee but a subcommittee designed to put together the economic development strategy which has been adopted. Now that the City has the strategy in place, perhaps the tasks of this committee are not such that a three month or six month timeline could work. However, past experience demonstrates that you need some time to understand what is being discussed and to set a direction on development being undertaken.

Council Member Chang stated that she supports staggering terms every six months similar to what is done with the Finance & Audit Committee for continuity purposes.

Mayor Kennedy suggested that Council Member Carr be retained for another three months on the committee, appoint a Council Member to immediately replace Council Member Tate and another one to replace Council Member Carr at the end of three months. Rotation of membership would occur with the next council member in line to serve on the EDS.

Council Member Tate felt that serving on this committee less than six months is not conducive to getting the EDS job completed. He stated his support of a year term.

Mayor Pro Tempore Sellers indicated that the Chamber of Commerce is undertaking a process of getting their economic development component up and running. Part of their work is similar to what he has undertaken with the downtown 10-15 years ago, including organizational development. He stated that he has particular interest in this area. Therefore, he would appreciate the opportunity to serve on the EDS at this time in order to bring his background and expertise to upcoming projects to use.

Mayor Kennedy stated that he has just started serving on the Santa Clara County Cities Association's development subcommittee that is working on some of the same issues that the City is working on. He felt that there was some overlap that would be mutually beneficial. He indicated that he would also be interested in serving on this subcommittee as soon as possible.

Council Member Chang supported Council Member Sellers and Mayor Kennedy serving the first rotations and that she would await her rotation.

Mayor Kennedy indicated that he would replace Council Member Tate on the EDS. Mayor Pro Tempore Sellers is to replace Council Member Carr in three months. Council Member Chang would serve on the EDS once his rotation concluded in six months.

Council Member Carr inquired whether the EDS would need to schedule set meetings and be an agendaized subcommittee.

Council Member Leichter said that in her discussions with the City Clerk, it has been brought to her attention that the EDS has a fairly regular meeting schedule and that it has an expanded scope of topics beyond the original intent. As the EDS is becoming a general subject matter jurisdictional subcommittee, it probably subjects the EDS to the Brown Act.

Mayor Pro Tempore Sellers inquired whether subjecting the EDS to the Brown Act would impede actions. He further inquired whether the EDS had any other concerns regarding being subject to the Brown Act.

Council Member Carr indicated that information brought to the EDS is usually proprietary in nature.

In response to Mayor Kennedy's question, City Attorney Leichter indicated that the Mayor can appoint an ad hoc committee for an interim period. She said that an ad hoc committee would make it less likely to subject meetings to the Brown Act.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** the Mayor's Rotation Appointment to the Economic Development "Ad Hoc Committee."*

City Council Action

PUBLIC HEARINGS:

12. DEVELOPMENT AGREEMENT APPLICATION, DA-03-13: MISSION VIEW DRIVE-MISSION RANCH – *Ordinance No. 1658, New Series*

Director of Community Development Bischoff presented the staff report, noting an error located on page 139 of the agenda packet, paragraph 14(i)(xiii). He indicated that this paragraph talks about establishing walkways beyond the limits of the project. He informed the Council that there are two other projects that are owned by the same developer that have made similar commitments. It is staff's recommendation that the wording contained in subparagraph xiii be consistent with the wording contained in the other development agreements to read as follows: "Install paved walkway to Live Oak High School as part of the joint commitment with Coyote Estates and the El Conte projects." He indicated that the three projects jointly agreed to install walkways as part of the Measure P applications.

Mayor Kennedy opened the public hearing. Dick Oliver, representing the applicant, indicated that he would answer any questions the Council may have. No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1658, New Series.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1658, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT APPLICATION DA-03-13 FOR APPLICATION MP 02-15: MISSION VIEW DRIVE-MISSION RANCH (APN 728-32-008 & 009) [amending paragraph 14(i)(xiii) of the development agreement as recommended by staff]** by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

13. ANNEXATION APPLICATION, ANX-01-01: CAMPOLI-COX – *Resolution No. 5771*

Community Development Director Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** the Resolution No. 5771, for Annexation.*

14. ZONING AMENDMENT, ZA-03-15; SUBDIVISION, SD-03-13; DEVELOPMENT AGREEMENT, DA-03-12: PEET-LUPINE – *Ordinance Nos. 1659 and 1660, New Series and Resolution No. 5772*

Community Development Director Bischoff presented the staff report, indicating that this is the first phase of a 90-unit development project. He stated that this first phase is 38-units awarded allocations under the 2002 Measure P competition and would be developed over three fiscal years beginning in 2004-05. He indicated that the subdivision map was reviewed by the Planning Commission in January 2004 and that there was at least one neighbor who spoke to the Commission, addressing concerns regarding the subdivision relating to the sound wall proposed along Cochrane Road/Peet Road; widening of Cochrane Road to collector street standards; and the connection of one of the interior roadways to Cochrane Road. He stated that in hearing these concerns, the Commission agreed that the sound walls, proposed to be masonry material, could be constructed of wood in order to keep the feel of the area. He noted that Cochrane Road has been designated as a collector street in the City's general plan for at least 15 years and that the Commission felt, given the amount of traffic expected to be on that street, that the collector street was appropriate. He indicated that the adjacent neighbors' concern regarding the interior roadway connection to Cochrane Road had to do with safety and the traffic going to and from the dam/County park to the east and the turning movements out of the subdivision. He stated that public works staff spoke at the Planning Commission meeting, indicating that they felt that a center refuge lane could be provided and that this would ensure safety of this area. Since that meeting, staff has discussed the possibility of closing the connecting road. He said that the neighbors do not want the interior road to Cochrane Road and requested that a cul de sac be installed. Both police and fire departments oppose this alternative. He said that the police department believes that having the road open provides for better patrol circulation and that the fire department expressed concern regarding access. If the cul de sac concept is to be approved, it was recommended that turf block or another alternative be installed to allow fire trucks to go over them. In staff's discussion with the fire department, they have indicated that they would not use a cul de sac with turf blocks and would be forced to access the subdivision through the entrance off of Peet. The fire department expressed concern that using the Peet Road entrance would delay fire response. They only saw the use of turf block if there was a blockage and that they needed a way to get people out in a slower, organized manner. He indicated that the Planning Commission recommends Council approval with the modification that the sound wall be made of wood as opposed to masonry. He noted that a letter from the neighbors has been included in the Council's packet expressing concerns.

Mayor Pro Tempore Sellers noted that one of the neighbors addressed the number of trees that are anticipated to be removed based on the addition of the interior street connecting to Cochrane Road.

Mr. Bischoff indicated that the property once contained a walnut orchard and that there is an existing row of walnut trees that would be located within the right of way on Cochrane Road and that these trees would be removed to widen Cochrane Road. He indicated that a wide landscaped area will be installed and that the walnut trees to be removed would be replaced with other trees. He indicated that Cochrane Road is identified as a collector street in the City's general plan and that it is still necessary to designate it as a collector street after the widening of Highway 101 and Butterfield Boulevard. He noted that this proposed subdivision has a street stubbed with the anticipating that at some point in time, the adjacent property would develop.

Mayor Kennedy opened the public hearing.

Dick Oliver, representing the applicant, indicated that as a developer, he would like to do what is best for the community and as directed by the Council with regards to this particular project. He indicated that he would prefer to install a cul de sac. He stated that the adjacent vacant parcel was annexed into the City at the time the property under discussion was annexed at the request of the City. He indicated that the adjacent parcel is not yet ready to develop and that it was his belief that it would develop within five years. He stated that build out of the project is 90 units and identified the timeline for build out. He indicated that future Measure P allocations could take anywhere from 3-10 years to build out. He clarified that he has 32 allotments approved to date. He said that his preference would be to install a cul de sac as it would provide good internal circulation. He did not believe that it would be good to have individuals coming in and out of the subdivision for safety reasons. He stated that he wants to be a good neighbor with individuals who have lived in the area for many years.

John Kennett informed the Council that a neighborhood meeting was held following the planning commission meeting. He said that at the planning commission meeting, he requested that the commission consider the installation of wood fences. However, it was the consensus of the neighbors that a solid sound wall be considered. He said that the neighbors are not fighting the widening of the road or the removal of the trees on the south side. However, the neighbors strongly object to what they believe will be a dangerous new intersection. He requested that the Council approve the site map with a third street as a temporary exit until the subdivision connects to Saint Marks and/or Saint Catherine at which time the through street would be converted to a cul de sac. He felt that the lack of speed posting is evident in the speed of vehicles traveling back and forth. He noted that staff is recommending a turn out and that he did not believe that a turn out makes a dangerous intersection safer. Another alternative is to funnel traffic to a controlled intersection at Peet Road. He said that the general plan talks about preserving the rural character wherever possible and that the neighbors believe that this is an area where this is possible. The neighbors believe that their proposal would be much safer for the residents of the subdivision, for those who already reside in the neighborhood and individuals who use Lake Anderson and the County park. He requested Council support of the one change to the subdivision map. He said that although the planning commission did not go along with all of adjacent neighbors' recommendation, he felt that they had a thoughtful discussion and was considerate of the neighbors' concerns.

Tom Dytko stated that he supported the comments as expressed by Mr. Kennett. He indicated that he is new to the area, relocating from Fremont. He stated that he moved away from areas of walls to this rural area. If Cochrane Road is to be widened, it would take away the reason he relocated to Morgan Hill. He did not know what traffic is being collected to cause the widening of the road, resulting in the elimination of the rural nature of the area. He informed the Council that traffic speeds out of the Boys Ranch to Peet Road is excessive. You also see speeding coming from traffic using the dam and the County park. He requested that the street be installed as a cul de sac.

Mr. Kennett stated that ultimately, if a turn out is to be installed and the road has to be widened, 10-12 years worth of 40-50 trees would need to be removed from his side of the street.

No further comments being offered, the public hearing was closed.

Council Member Carr noted that Mr. Oliver agreed to install a wooden fence or masonry sound wall. Therefore, it would be easy to revert back to a masonry wall.

Deputy Director of Public Works Bjarke stated that staff does not believe that the trees on the north side of Cochrane Road would need to be removed to build the improvements that would be required with Mr. Oliver's subdivision. Staff has looked at the street width and concluded that a common left turning lane could be installed that would not require the removal of the trees on the north side of Cochrane Road.

Council Member Tate recommended that the Council proceed with the notion that either in phase IV or when the adjacent property develops, the road would be closed to a cul de sac.

City Manager Tewes said that designing a subdivision is both a science (traffic engineering) and an art (marketing subdivisions). It was his understanding that the recommendations from the neighbors is that the opening onto Cochrane, as shown on the map, be a temporary opening until such time as further connections are made. He felt that it would be appropriate for the Council to review the opening at such time that future connections are proposed. He did not believe that it would be prudent to make a decision about future connections this evening.

Mr. Oliver informed the Council that he would install and open the cul de sac with asphalt and no curb until such time that the Council reviews future subdivisions.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1658, New Series.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1658, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A RESIDENTIAL PLANNED DEVELOPMENT AND PRECISE DEVELOPMENT PLAN FOR A 90-UNIT SINGLE-FAMILY PROJECT LOCATED AT THE NORTHEAST CORNER OF COCHRANE ROAD AND PEET ROAD (APNs 728-34-002 & -003) (ZA-03-15 PEET - LUPINE)**, as amended, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No.5772, Upholding the Planning Commission's Decision; with the following modifications: 1) installation of a masonry sound wall; 2) an open road to Cochrane be designed; and 3) the opening of the road to Cochrane is to return to the Council once subsequent subdivision(s) occur.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1659, New Series (Development Agreement).*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1659, New Series, by Title Only as follows: ***AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-12: PEET – LUPINE INVESTORS/BORELLO (APNs 728-34-002 & -003) (DA-03-12: PEET - LUPINE)***, as amended, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Mr. Oliver informed the Council that he would install a sign that states that the cul de sac could be closed in the future so that no one can come to the Council and state that they purchased their home and did not realize that the cul de sac would be closed.

Redevelopment Agency Action

OTHER BUSINESS:

15. EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT (ERN) WITH EL TORO BREWING

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that on January 21, the Redevelopment Agency selected the El Toro Brewing Company as the developer to develop a restaurant/brew pub at the police station located at Main and Monterey Road. At that time, the Agency established performance milestones for an exclusive right to negotiate agreement as well as baseline business terms for this agreement. He stated that since that time, staff has met with El Toro Brewing Company representatives twice. At the last meeting, El Toro indicated that they had some concerns regarding the ERN. However, he felt that all issues have been worked out with the exception of one issue - the indemnification clause. Specifically, El Toro had some concerns about reimbursement or out of pocket costs. Staff has addressed this by indicating that the Agency can only terminate the agreement for cause and renders the reimbursement issue mute. The second issue relates to the purchase price of \$650,000. He said that it is El Toro's understanding, different from the Agency's understanding, that the \$650,000 was contingent upon the waiver of fees and permits. He stated that staff has indicated to El Toro that it qualifies for the fee exemption under the current provision of the ordinance regarding CC-R zoning in the downtown. The project would be exempt from paying impact fees. With this understanding, El Toro is comfortable with the \$650,000 purchase price. However, he said that it should be noted that El Toro believes that should the City increase the purchase price to a higher amount that they be allowed to request additional financial assistance from the Agency. He stated that it was staff's understanding, from the January 2004 meeting, that the Agency Commission indicated that the \$650,000 was the base line purchase price and that staff could negotiate a higher price if the project's economics dictated that no additional financial assistance would be requested from the Agency. He requested that the Agency Commission reaffirm staff's understanding of this provision. He

informed the Agency Commission that El Toro has indicated that they would like “dead time” when the higher price is placed on the table. He said that staff agrees that 60 days was a reasonable time period to figure out what the higher purchase price would be, if warranted.

Mr. Toy indicated that El Toro has environmental concerns accepting the property as is. He said that the solution agreed upon was that El Toro would conduct an environmental phase 2 study of the property during the ERN period. Staff is recommending that the Agency share 50% of this cost up to \$4,000 as the City would benefit from the study. Based on the findings, El Toro can decide to accept the property as is, terminate the exclusive agreement, or they can attempt to negotiate a price reduction or financial assistance from the Agency. The last issue being discussed is the indemnification language. It was his belief that this issue could be resolved.

Chairman Kennedy opened the floor to public comment.

Geno Acevedo thanked staff for all their work, indicating that they have been very professional and sensitive to his concerns. He stated that El Toro is happy where it is at this time and that it is his hope that he can move forward with this project.

No further comments were offered.

Agency Member Tate noted that staff is requesting clarification on the understanding of the increase in purchase price. He said that it was his believe that there was an aggressive assumption in the business plan of four table turns a night, giving the project a large return. He indicated that Agency Member Chang stated that if El Toro realized this kind of business plan, she questioned whether the purchase price should be higher. It was his recollection that this was the nature of the discussion and that it was not about giving additional concessions. It was more in the nature of the City participating if El Toro achieved an aggressive business plan. However, he did not know how you would incorporate this into an agreement.

Chairman Kennedy said that it was his recollection that the Agency Board talked about bringing an understanding together where the City would share in El Toro’s revenues/profits if they did better than what was expected.

Executive Director Tewes agreed that Chairman Kennedy introduced the concept of profit sharing if the project did better than anticipated. However, he did not believe that there was Agency consensus on this issue. He took the Agency’s consensus as being that the City is to get the best deal that it can. If their business is going to generate the kind of operating income that their performance suggests, the City needs to find a way to participate in this. He said that the purpose of the period of exclusive right to negotiate is one where you negotiate all items.

Agency Counsel Leichter informed the Agency Commission that an agreement has not been reached as to whether the indemnification should survive the termination of the agreement. She informed the Agency Commission that the liability does not terminate potential liability just because the agreement does. She stated that the statutory period for any liability goes beyond this. She said that an individual

could still sue over something that happened within the time period covered by the agreement. Therefore, it will be her recommendation that the City continue with this language in the agreement.

Vice-chair Sellers inquired whether Agency Counsel Leichter felt that there were legal concerns that might derail this project.

Agency Counsel Leichter felt that this was an issue where an agreement can be reached.

Agency Member Chang said that should the business turn more than four tables, the City should consider the concept of profit sharing.

Agency Member Tate said that it was his belief that staff was seeking direction from the Agency with regards to granting other concessions if they get a higher price for the building. He did not support giving additional concessions but that staff be given latitude to negotiate something similar to what Chairman Kennedy was suggesting and not couple it with concessions in other areas.

Agency Member Carr agreed with Agency Member Tate. He said that the City needs to get to the negotiation phase. He felt that the negotiation process has been dragging. The less the Agency ties hands, the better off the City would be.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Accepted** the following recommendations: Staff is not to accept a purchase price less than \$650,000; directed staff to negotiate with El Toro Brewing for the timing and scope of development; and if their business plan proves to be a success, as being suggested, staff to negotiate a purchase price greater than \$650,000.*

City Council Action

19. URBAN LIMIT LINE STUDY – AMENDMENT OF CONTRACT WITH MOORE IACOFANO GOLTSMAN AND REALLOCATION OF APPROPRIATED FUNDS

Director of Community Development Bischoff presented the staff report. He informed the Council that the Urban Limit Line Committee (committee) would like to perform a more in depth implementation plan in advance of determining where the urban limit line/greenbelt should be in the southeast quadrant of the community. The committee directed staff to develop an implementation plan which would be brought before the Council for consideration. The committee further challenged staff to develop the plan in such a way that it would not add cost to the contract. The committee revised the scope of work in February 2004 and requested that staff present it to the Council for consideration. He informed the Council that the committee believes that if they have a better feel for the implications of where the line is to be drawn and how a greenbelt would be implemented outside of the line, it would make it easier for them to decide where the line should be drawn and how large the greenbelt should be. He stated that the amendment to the contract before the Council would not increase the consultant's cost but would allow the Council to use the contingency for additional staff assistance as opposed to consultant assistance.

This action would extend the timeframe for the project from June to November 2004 when the committee will ask for Council endorsement of their work, followed by the environmental process.

Mayor Kennedy indicated that the committee found that property owners were concerned that should a greenbelt line be drawn on their properties, there would be no certainty that they would be compensated for the potential designation of their property as greenbelt. He stated that Council Member Chang pushed for an effort to find a way to deal with the implementation, including such things as acquisition of easements, outright title acquisitions, etc. He indicated that Council Member Chang recommends that there be a strategy in place as well as an implementation plan so that there will be some comfort on the part of the property owners that they would be compensated should the line be drawn across their properties.

City Attorney Leichter said that it was her understanding that the imposition of a greenbelt does not require compensation nor should it be looked at as requiring compensation. She clarified that the imposition of a greenbelt would not necessitate compensation.

Council Member Chang said that this issue has not been fully addressed to date.

City Manager Tewes said that a number of alternatives would be evaluated with the scope of work. He said that there is nothing about the imposition of a greenbelt that requires compensation. He stated that the committee will look at a variety of options as there are other ways to address this issue other than compensation.

Mayor Pro Tempore Sellers said that he was the first staff person appointed to serve on the Santa Clara County Open Space Authority. Part of the scope of work was determining where it would target open space. He did not recall that the Council was going to look at flat lands and try to make harsh determinations on this particular area. He inquired whether this was an area that evolved and if so, what direction the Council can provide. The other issue is that of compensation. He did not know where the money would come from to pay for compensation as the Open Space Authority would not be a source of any significant funding. He felt that it would be disingenuous to go down this path if the Council is not sure that there will be funds available. He stated that he has a significant concern about considering compensation. He inquired whether these were issues that the committee is insisting on and the Council needs to weigh in on.

Mr. Bischoff said that there is potential conflicting language in the general plan. He said that there is one policy that talks about a separation between Morgan Hill and Gilroy. He stated that the committee dealt with the issue as to whether San Martin would be an adequate separator between the two. The committee also talked about separating urban from non urban area. There was a question as to whether San Martin was developed at such a low enough density that you do not need to be concerned about it. There was a question as to whether it was the intent of the policies to avoid a Sunnyvale-Mt. View interface where you do not know when you are leaving one community and entering into another. There was also a question of whether the City wanted something different to separate itself from San Martin. He said that the direction the committee would like to undertake is to provide a separation between Morgan Hill and San Martin. The committee was looking at flat lands and that this was their interpretation of the general plan. Regarding funding to compensate, he said that there has been a lot of

discussion about zoning and other types of regulatory techniques that can help to accomplish greenbelts. He said that there are a few property owners that sit on the committee who own land in the southeast quadrant who are concerned about regulatory techniques. The property owners feel that if their properties are to be placed in a greenbelt, they should be compensated for this. He informed the Council that there is a large sentiment in the committee that irrespective of whether the City should or shouldn't compensate property owners for not being able to develop their lands, the only way to create permanent greenbelt is to purchase their property or purchase development rights to the properties. The committee wants to look at this, noting that the committee has not looked at implementing the greenbelt to date. There is some thought amongst some of the committee members that a benefit assessment district may be a tool where all property owners could get together. A plan could be developed that identifies some properties within the area that will ultimately be developed while other properties will not. It was felt that there will be benefits that will be accrued to those who can develop, and that as a result of these benefits, the property owners should be obligated to pay for development rights to those who cannot develop. He indicated that this was conceptually identified as a possible mechanism to fund the greenbelt. He stated that there are other open space organizations that might be potential sources of funding and that part of this implementation program was to look and see what funding sources are available. If the majority of the Council does not believe that urban separation or a greenbelt in the flatland areas should be considered, it would be helpful and important for the committee to know this. If the Council is proposed to state that it is not interested in easements or fee acquisitions, it would also be important for the committee to know this fact.

Council Member Carr inquired whether the implementation plan is being thought of broadly enough that it is at one end or that it is being stated that a line be drawn, and placing that matter on the ballot; allowing the voters to decide and not deal with the issue of compensation.

Mr. Bischoff said that there has been significant discussion about compensation for individuals who have properties outside the line. There has also been discussion amongst committee members about an ultimate boundary line for growth of the City and how to make it permanent. He stated that there has been discussion about placing the issue on the ballot to make the ultimate boundary line permanent.

Mayor Kennedy said that the course that the committee is on will lead the City to a successful conclusion. He felt that the proposed implementation plan, looking at the variety of options available to process, whether it is acquiring development rights, open space easements, or acquiring lands by fee title are things that will be considered. Also, to be considered is a benefit assessment district for those who benefit from development to share in the gains. He felt that this direction would keep the City in the right course and is doable.

City Attorney Leichter reiterated that the action before the Council is to amend the consultant contract to address the implementation issues. She advised the Council to do so with the understanding that it is not stating that compensation is required at this time. This is an implementation discussion and not a compensation plan discussion.

Council Member Chang stated that she has mixed feelings about recommending this plan to the Council. She said that she has worked hard with the City Manager, Mr. Bischoff, Mayor Kennedy and committee members to identify where it wants to be. If the City goes forward with an implementation plan, she did

not know if the outcome would result in another law suit and that the property owners would be happy with the environmental group. She felt that there are two ways to look at this: 1) be optimistic and move forward with the program; or 2) leave the southeast quadrant out of the plan as the City has three sides of the mountains designated as greenbelt. Taking this action would result in returning funding to the general fund.

Mayor Kennedy said that there are several issues that the Council has been asked to address: 1) look at the southeast quadrant for possible industrial development; and 2) look at possible locations for large group assembly facilities. He said that even if the City was not to fund this effort, there was additional work that needs to be done.

Mr. Bischoff said that should the Council not approve the amended scope, the assumption would be that the existing contract remains in place and that the existing contract provides funding to look at large group assembly facilities, visual impacts, and conduct environmental review. If it is the desire of the Council not to approve this action, staff would like direction. He inquired whether it would be the expectation of the Council that staff/committee would complete the contract at the original scope as drafted or some other alternative.

Council Member Chang indicated that this is the direction that the committee wants to take and has been agreed upon. If the City is to proceed with the consultant, the City will still spend \$100,000 to finish the project. She stated that it is the committee's recommendation to take a different approach, changing the scope of work.

Council Member Tate indicated that he would like to understand the timeline for the committee such that there is a plan that contains certain milestones to be reached. The Council can monitor progress with identified milestones.

Mayor Kennedy recommended that staff provide council members with the timeline identified for the committee.

Mr. Bischoff indicated that amendment to the contract would extend the project to November 2004. Part of the challenge was to perform the additional work without expanding the scope of work of the consultants and trying to keep the commitment of staff time to a minimum. Staff included six meetings of the subcommittee that would look at the southeast area and four meetings of the full committee to look at the large group assembly facilities, visual impacts and wrap up other items. He said that it was the original expectation that the entire project would have been completed by now. He said that progress has been slow with the committee as there has not been a lack of healthy debate on any item. He felt that the workplan before the Council is aggressive but optimistic.

Council Member Tate stated that he understands the need for more money. What he is hearing is that three meetings could take place and that there is still not a concrete consensus being built. He inquired whether the Council could be informed of this fact so that the City does not get into an infinite number of meetings that will not bring this project to closure.

Mr. Bischoff said that staff schedules periodic updates for the City Council. What he hears Council Member Tate requesting that staff report back on a regular basis versus every three months.

Mayor Kennedy stated that there are several approaches to address this issue; one is to draw an urban limit line around the city. However, it was found that the City could not do this because members of the committee could not support because it is too risky for property owners. The committee changed the approach to focus on providing implementation measures to implement the plan. Regarding the southeast quadrant, the concept was to look at developing a master plan of what the area is to look like. However, it would not be this committee who would develop the plan as it is a major undertaking. You need to determine where the industrial, commercial, residential, and arterial would be. This is far beyond the scope of this committee. However, the committee would state that this is the mechanism to be used to provide for the greenbelt in the urban limit line in this area. He said that a master plan for this area needs to be done in order to bring this about.

Council Member Carr inquired whether there were milestones within the project or immediate questions/directions that the Council can be answering to help move the project along. He said that he keeps hearing that the discussions at the ULL meetings are very contentious. He inquired whether there were items that need to come to the Council for direction.

Mr. Bischoff said that direction from the Council regarding an urban limit line/greenbelt in the flatland areas to the south and compensation would be helpful as it could cut months off from discussions. He indicated that he could identify intermediate milestones at a later date.

Council Member Carr said that he was not informed enough about what has taken place with the ULL. He felt that the committee may be setting a direction; legislating on its own. He did not want them to work two years on a product and come back to the Council where the Council is not comfortable with the direction taken; having to vote their recommendation down or take an alternate direction. He felt that the Council may need to take a step back but that he would hate to suggest slowing the process down as it is a Council goal that is behind schedule. However, he felt that there may need to be a more in depth analysis of what has taken place to date, where the committee thinks it is heading and where the Council thinks the direction the committee should be taking; giving more specific direction before changing the scope of work and dollars.

Mayor Kennedy requested that staff agendize a presentation of the progress that has been made by the committee and what it is proposing to do in a workshop setting, if necessary.

Mayor Pro Tempore Sellers felt that reporting could be in the form of background written material. He recommended that the Council start reviewing where the committee is at. He expressed concern that the Council may be at odds with the committee. He applauded the committee's effort to take an initiative to look at other issues. However, there are costs in terms of time and money. He did not believe that the Council could approve this direction unless it has some sense that these are appropriate costs.

Mayor Kennedy encouraged Council members to attend a ULL committee meeting to get a flavor of the work being undertaken by the committee.

Council Member Carr suggested that the committee not make too many decisions and continue on its path until the Council has met to decide direction. He said that a significant amount of time is needed to review the direction of the committee and that it was his belief that the committee would be interested in attending and being active participants at the Council workshop. Unless the Council hears from committee members directly, he was not sure that the Council would get the full appreciation of their direction.

Council Member Tate stated that he wanted to understand where the committee wants to go with compensation. If this is to be the dominant distraction, it worries him that this aspect would not reach an agreement. If the Council can give direction on this specific area, it would be better in terms of establishing milestones.

Council Member Chang felt that compensation is a complicated issue. She stated that she is considering recommending excluding the southeast area of the city from the project and that the committee completes its work on the east, west and north. She said that the committee has to complete discussions on large group assembly facilities, visual impacts and view sheds. Once these discussions take place, the committee's charge is complete. If so, the City can save approximately \$100,000 without moving forward with any other issues.

Mr. Bischoff said that the City is working cooperatively with the County on large group assembly facilities and visual impacts at their request. He said that these are issues that could be addressed fairly easily. He felt that it would be beneficial to wrap up other issues, finalizing where the urban limit line and greenbelt are to be in other areas. He indicated that of the \$250,000 in the contract, there is \$60,000 in general fund money with the rest coming from the General Plan fund and a number of other funds. He was not sure if there was much savings that would come back to the general fund.

Mayor Kennedy recommended that the Council not take action on this item this evening and that it be continued until such time that the Council receives a report on what the committee has done/not done and their plans to move forward. The Council could make a decision on the recommended action at that time.

Mr. Bischoff said that if it is the overall Council's intent to encourage participation of committee members, it may be better to do so in a workshop format.

City Manager Tewes recommended that a workshop be held on March 24, 2004 to better balance the Council's workload.

Council Member Tate indicated that he would be able to participate in a future workshop via phone.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Mayor Kennedy, the City Council unanimously (5-0) **Deferred** action to a March 24, 2004 workshop.*

20. REGULATION OF WIRELESS ANTENNAS AND OTHER TELECOMMUNICATIONS FACILITIES

Assistant to the City Manager Eulo presented the staff report.

Mayor Kennedy recommended that the City piggy back on the work that has been done by the City of Gilroy; using a lot of what the City of Gilroy has done and not reinvent the wheel as they have done an extensive amount of trail blazing in this area.

Mr. Eulo informed the Council that there are many other models that would be worth looking at such as the City of Palo Alto and the City of San Jose. He did not believe that the City wants to rely on the thinking of one community on this issue.

Mayor Pro Tempore Sellers recommended that the legislative subcommittee take a look at this issue, determine how much work would be necessary to implement and determine if there is an easier way to implement this item.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Referred** this item to the Legislative Subcommittee for consideration of existing ordinances in adjacent cities and to review a scope of work.*

21. SCHEDULE DATE(S) TO INTERVIEW APPLICANTS TO FILL UPCOMING VACANCIES ON THE LIBRARY AND PARKS & RECREATION COMMISSIONS

Council Services and Records Manager Torrez informed the Council that the City has advertised and recruited to fill vacancies on the Library and Parks & Recreation Commission. This effort resulted in receipt of 3 applications to fill 5 vacancies of a 9-member Library Commissions and 3 applications to fill 4 vacancies on the Parks & Recreation Commission. Therefore, there was not a need to schedule a meeting date to interview to fill vacancies at this time. She informed the Council that a request has been made from one of the incumbent Parks and Recreation Commission that interviews be held before March 22 to accommodate a scheduled surgery.

Council Member Tate indicated that it was the Council's express intent to reduce the Library Commission make-up down to a 7-member commission. Therefore, he recommended that the 3 applicants be appointed to serve on this Commission.

Mayor Kennedy supported appointing the three applicants to serve on the Library Commission.

Ms. Torrez inquired whether the Council would like to have staff return with the applications for Council review and appointment.

Mayor Kennedy felt that the Council may wish to extend the recruitment date for the Parks and Recreation Commission to allow for sufficient number of applicants to be interviewed for appointment.

Council Services and Records Manager Torrez informed the Council that the Council amended the Master Provisions of the Municipal Code to extend the terms of Boards and Commissions until such time that vacancies are filled.

22. ORAL REPORT ON FIRE CONTRACT NEGOTIATIONS

City Manager Tewes presented a report on fire contract negotiations. He informed the Council that the City is nearing the end of a ten year agreement with the Santa Clara County Consolidated Fire Protection District. This contract expires on June 30, 2005. He indicated that a year or so ago the Council adopted a Fire Master Plan that calls for the eventual increase in staffing levels on existing engine and truck companies and the development of a new station. He noted that the City's budget forecast suggests that the City needs to make modifications on the level of services throughout the entire organization funded by the general fund. In light of all this, staff came before the Council approximately six months ago and suggested that rather than going through an extensive RFP process, based on the City's satisfactory performance of the County Fire personnel and the cost of the existing contract that staff begin discussions for extending the contract without further competitive review. The Council agreed to a series of parameters that included a desire for as much as a three year extension of this contract. When the Council established its annual goals, the Council requested that staff return on March 3, 2004 so that it could determine whether or not staff was making sufficient progress in discussions to proceed to the development of contracts or whether the City should pursue other options. He reported that within the last week, staff has made good progress and gives him confidence that both parties are working toward a mutual recommendation. He requested that the Council provide staff two more weeks to report back (March 17, 2004).

Action: *By consensus, the Council Continued this item for two weeks.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Chang inquired whether the Council would be endorsing City Pack. She indicated that the Cities Association Executive Board has requested city endorsement.

Council Member Carr indicated that the Council endorsed the measure at its last meeting and that signatures are currently being gathered by the League of California Cities.

ADJOURNMENT

There being no further business, Mayor/Chairman/President Kennedy adjourned the meeting at 9:28 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK
AGENCY/COMMISSION SECRETARY



CITY COUNCIL STAFF REPORT

MEETING DATE: (March 17, 2004)

ZA-03-19: CITY OF MORGAN HILL- ZONING TEXT AMENDMENT/ COMMUNITY ACTIVITY SIGNS AND CHANGEABLE COPY SIGNS FOR PUBLIC AGENCIES, SCHOOLS, PLAYHOUSES AND RELIGIOUS INSTITUTIONS

RECOMMENDED ACTION(S):

Reconvene public hearing and table the application.

EXECUTIVE SUMMARY:

The City is requesting to amend Title 18 of the Municipal Code, to modify the sign code text. The proposal would amend the definition of Community Activity Signs, create a definition for "Community Group", and amend the criteria for Community Activity Signs. Also, included is a request to allow one manually changeable copy-sign for public agencies, schools, playhouses, and religious institutions.

This item was advertised for public hearing and continued to the March 17, 2004 meeting. However, the amendments have not been finalized. It is recommended that the Council reconvene the public hearing and table the application. The item will be re-advertised for the April 21, 2004 City Council meeting.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 20

Prepared By:

Associate Planner

Approved By:

**Community
Development Director**

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2004

Agenda Item # 21

Prepared By:

Contract Planner

Approved By:

CDD Director

Submitted By:

City Manager

ZONING AMENDMENT, ZA-03-20; DEVELOPMENT AGREEMENT, DA-03-15: E. CENTRAL – WARMINGTON (SOUTH)

RECOMMENDED ACTIONS:

1. Open/Close Public Hearing
2. Motion to approve the Mitigated Negative Declaration
3. Waive the reading in full of the Zoning Amendment Ordinance
4. Introduce on first reading the Zoning Amendment Ordinance (roll call vote)
5. Waive the reading in full of the Development Agreement Ordinance
6. Introduce on first reading the Development Agreement Ordinance

EXECUTIVE SUMMARY: A request for approval of an RPD and Precise Development Plan for the 28.345-acre Morgan Lane Development and a development agreement for 26 lots located south of E. Central Ave. and north of E. Main Ave.

The RPD currently consists of the 59-lot portion of Morgan Lane north of East Central Ave. The overall Morgan Lane development must be designated as an RPD to ensure that a cohesive land use plan is implemented and because the applicant seeks to create lots that do not meet the minimum standards required in the R1 (7000) district. The Zoning Amendment will expand the RPD to include the 9.73-acre area south of East Central Ave., to be developed with 26 residential lots and one 4.297-acre rural lot known as the Kuwabara property that will continue to be used for agricultural operations immediately south of the subdivision along East Main Avenue. The RPD will be amended to show a total of 85 residential lots. The applicant is also requesting approval of a Precise Development Plan for the 28-acre RPD area (attached). Calle Siena will be extended south from East Central Avenue and Talbot Court will provide access to Talbot Drive to the east. Access to the area will be provided by Calle Siena from the north and south, East Central Avenue from the east and west and Talbot Drive from the east. The resulting overall density will be 3 units/acre, which is within the maximum permitted density of 5 units/acre under the "Single-Family Medium" General Plan designation. The proposed Precise Plan and amendment to the RPD are in keeping with the purpose of the RPD and will enhance the project. The Commission considered the Zoning Amendment at the February 24, 2004 meeting and voted 6-0 to recommend approval. The Commission also voted to recommend approval of the project's Mitigated Negative Declaration.

In accordance with established Council policy, all residential projects awarded building allotments through Measure "P" must secure Council approval of a development agreement. Development agreements are required as a formal contract between the developer and the City. The Development Agreement for Phase 4 is attached for Council review. The 2002 Measure "P" commitments and a processing schedule are included within the agreement. (See Exhibit "B" of the agreement for schedule.) The Commission recommended approval of the Development Agreement at the meeting of February 24, 2004. The Commission's staff report and minutes are attached for Council's reference. Staff recommends approval of the Development Agreement and Zoning Amendment, as prepared.

FISCAL IMPACT: None. Filing fees were paid to the City to cover processing of this application.

ORDINANCE NO. ____, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1601, NEW SERIES, TO ALLOW EXPANSION OF THE EXISTING RESIDENTIAL PLANNED DEVELOPMENT TO BE LOCATED ON THE NORTH AND SOUTH SIDES OF EAST CENTRAL AVENUE, TO R-1 (7000)/RPD. THE AMENDMENT INCLUDES THE ADOPTION OF A PRECISE DEVELOPMENT PLAN FOR THE 86-LOT, 28.345-ACRE RPD (APNs 726-20-003 & 726-28-048 through 052).

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A Mitigated Negative Declaration will be filed.
- SECTION 4.** The City Council finds that the proposed RPD and Precise Plan are consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 5.** Approval of the Morgan Lane RPD and Precise Development Plan shall allow the following deviations from the R-1(7000) zoning district:

Lot No.	Lot Size (as specified in Sec. 18.12.060A)	Lot Depth (min. 85 ft.)	Lot Width (min. 60 ft. detached/ 40 ft. attached)	Setbacks (as specified in Sec. 18.12.060E)
✓ indicates lot in conformance for this standard.				
61	6,841 sq. ft.	✓	✓	✓
62	✓	✓	37.35 ft.	✓
63	✓	✓	37.17 ft.	✓
66	6,745 sq. ft.	✓	✓	✓
67	5,514 sq. ft.	✓	44.12 ft.	✓
68	5,511 sq. ft.	✓	53.00 ft.	✓
69	5,649 sq. ft.	✓	54.33 ft.	✓
71	6,465 sq. ft.	✓	✓	✓
73	3,612 sq. ft.	69.27 ft.	✓	✓
74	3,761 sq. ft.	69.27 ft.	✓	✓
78	3,296 sq. ft.	✓	37.45 ft.	✓
79	3,420 sq. ft.	✓	37.17 ft.	✓
80	✓	✓	✓	4 ft. front yard encroach.
84	3,928 sq. ft.	✓	37.17 ft.	✓
85	3,401 sq. ft.	83.6 sq. ft.	37.45 ft.	✓

SECTION 6. The City Council hereby approves the Precise Development Plan as contained in that certain series of documents date stamped January 21, 2004, on file in the Community Development Department, entitled "Morgan Lane, Phase 4" prepared by MH Engineering Co. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, parking areas, landscape areas and any other purposeful uses on the project.

SECTION 7. With the exception of the deviations allowed under Section 5 of this Ordinance, buildout of Morgan Lane shall comply with the site development standards of the R1(7000) district. Any modifications to the approved building plans shall also comply with the site development standards of the R1(7000) district.

SECTION 8. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 9. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 17th Day of March 2004, and was finally adopted at a regular meeting of said Council on the 7th Day of April 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7th Day of April 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

ORDINANCE NO. _____, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT, DA-03-15, FOR 26 LOTS LOCATED ON THE SOUTH SIDE OF EAST CENTRAL AVENUE NORTH OF EAST MAIN AVENUE, FOR MP 02-19: E. CENTRAL - WARMINGTON (SOUTH) (APN 726-20-003).

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution Nos. 03-17a and 03-17b, adopted May 27, 2003, has awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 02-19: E. Central - Warmington (South)	26 single-family homes

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 17th Day of March 2004, and was finally adopted at a regular meeting of said Council on the 7th Day of April 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7th Day of April 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103

Recorded at the request of
and when recorded mail to:

EXHIBIT "A"

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2004, by and between WARMINGTON HOMES, INC., under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On _____, 2004, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on _____, 2004.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

- (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in Paragraph 3 below and includes the Property Owner's successor in interest.
- (d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

- Exhibit "A" - Development Allotment Evaluation
- Exhibit "B" - Development Review and Approval Schedule
- Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the

agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On November 7, 2001, the City of Morgan Hill approved a Precise Development Plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-02-19: E. Central - Warmington, on file in the Office of Community Development to which reference is made for further particulars. On [REDACTED] 2004, the City of Morgan Hill approved an amendment to the existing Precise Development Plan for the real property to include that portion of the development located south of East Central Avenue. The precise development plan provides for the development of the property as follows:

Construction of 26 single family homes as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in Paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time

requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single Family Medium and zoning classification of R-1 (7000) / RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

That shown on the Vesting Tentative Map, Grading Plans and Precise Residential Development Plans, as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative Map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under the Site and Architectural Review Process.

- (d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and the Site and Architectural Review Process.

- (e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

- (g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

- (h) Property Owner agrees to include the following safety features in the development:

- (i) Provide fire escape ladders for upper floor bedrooms.
- (ii) Provide one mounted fire extinguisher (rated 2A10BC) for each 1,500 square feet of floor space.
- (iii) Provide outdoor lighting to meet all police department specifications.
- (iv) Install illuminated or self-luminous address numbers for each unit and illuminated curb numbers where possible.
- (v) Use of noncombustible siding materials on at least fifty percent of the units within the project. The noncombustible siding must be used on at least fifty percent on an individual unit.
- (vi) Will provide an approved and monitored fire and intrusion alarm system within each unit.
- (vii) Provides automatic earthquake shut-off valves for gas service.

- (i) Property Owner agrees to include the following open space improvements in the development:

- (i) Applicant agrees to provide a continuous open space buffer, 10 feet in excess of the minimum, along the East Main Avenue frontage.
- (ii) Park and open space to be maintained by a Home Owners Association (HOA).
- (iii) Internal pathway provided leading to the park and open space area within the project.

(j) Property Owner agrees to include the following landscape improvements in the development:

- (i) Applicant will provide and install 24" box size trees (City approved) with a minimum height of nine feet and spread of three to four feet, at a ratio of one per ten site trees (excludes street trees).
- (ii) Developer will install varied front yard landscaping plans.
- (iii) Deciduous trees will be planted along the south facing side of homes or buildings to conserve energy.
- (iv) All street trees (two trees per lot, three trees per corner lot) will be 24-in. box trees from the city-approved list.
- (v) Landscape planting and irrigation systems shall be designed to conserve water.
- (vi) Drought tolerant grasses shall be used for lawn areas. Lawn areas will not exceed 25 percent of landscape area (exclusive of parks).
- (vii) Automatic irrigation systems will utilize separate valves and circuits for trees; shrubs and ground covers; and lawns areas. Minimum of three separate valves will be provided.
- (viii) Water conserving irrigation system will be used within the development
- (ix) Developer shall install non-irrigated hardscape coverage on at least 15 percent of landscape area (does not include pedestrian walkways across circulation aisles).
- (x) At least 50% of all plant material used shall be water conserving plans will be used from City Selected Plant list.
- (xi) Landscaping shall be installed on all areas visible from public and private rights-of-way.
- (xii) Existing oaks will remain or be relocated on site.
- (xiv) Project design includes 6' good neighbor fencing.
- (xv) Project desing incorporates open space easement adjacent to existing Kuwabara carnation growing center and retains the agricultural use.

(k) Property Owner agrees to the following school impact mitigations:

- (i) Applicant agrees to pay the district-adopted developer fees as required by the Leroy F. Greene Schools Facilities Act of 1998.

(l) Property Owner agrees to the following pedestrian and bicycle safety improvements:

- (i) The project will provide a crosswalk and caution signal at Central Avenue at the intersection of Calle Mazatan.
- (ii) Applicant agrees to install flashing crosswalk surface lighting at the Central Avenue-Calle Mazatan intersection, or contribute \$1,000 per

dwelling unit per point for other offsite and/or traffic safety improvements approved by the MHUSD for use near their facilities.

(iii) Applicant agrees to install or contribute to the installation of a pathway from the project site to the Live Oak High School along East Main Avenue, or contribute an additional \$2000 per dwelling unit per point for other off-site and traffic safety improvements approved by the MHUSD to conform to this criteria.

(iv) Project will install additional flashing yellow beacons at the intersections of Lancia and Central Avenues and the newly proposed ingress to the Morgan Lane project at Central Avenue.

(v) Project will construct Class I bicycle paths along East Main and striping for Class II bike lanes along Central Avenue.

(m) Property Owner agrees to purchase one (1) transferable development credit (TDC's) for every twenty-five dwelling units proposed. The applicant is currently proposing 26 units. Should purchase of the TDC's prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee in an amount satisfactory to the City Council. Proof of unsuccessful negotiation for the TDC's must be presented to the City with the request of the in-lieu fee option. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

(n) Property Owner agrees to include the following affordable housing features in the development:

(i) The overall Morgan Lane development shall provide nine (9) Below Market Rate units (BMRs). BMRs shall be for sale to low-income purchasers.

(ii) Project shall include 10% moderate rate homes.

(iii) Applicant shall construct eight (8) single family attached units.

(iv) BMR purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents, agrees to assist BMR purchasers with all phases of sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.

(v) Applicant agrees to pay standard housing mitigation fees.

(vi) Exterior trim entry door hardware, and finish to the same standard as Market Rate units.

(vii) Interior standard finishes will be as follows:

- Kwikset standard hardware.
- Price Pfister, or equal, entry level faucets.
- Interior doors will be the same as the Market Rate units.
- Appliances: GE entry level, includes dishwasher and microwave and single oven slide-in range.
- All closets will have doors but no casings.
- Laundry hook-up in house or garage.
- Kitchen counters to be ceramic tile.
- Carpet to be nylon or equal.
- Inside color selection is available.
- Kitchen cabinets to be stained wood with plain front.

- Units will be roughed in for AC, excluding electrical.
- Alarm system.

(o) Property Owner agrees to include the following construction features in the development:

- (i) Project will include installation of EPA “Energy Star” windows.
- (ii) High efficiency gas furnaces of 90% efficiency rating or greater shall be installed in all dwelling units and they will achieve a 15% reduction in energy use.
- (iii) Will provide two separately zoned high-efficiency heating systems in at least 60% of the units.
- (iv) Will provide recirculating hot water with demand pumping.
- (v) Class A roof covering will be installed.
- (vi) Will install ground ring cast-iron drainage pipes and piping insulation between floors for sound reduction of plumbing.
- (vii) Will provide future ready wiring.
- (viii) Will provide the following on all units:
 - Masonry (ie., stone brick, etc.)
 - Furrouts at windows and other principal openings
 - Oversized floor framing member throughout
 - Full sheet rock in garage, including tape, skim texture and paint
 - Glued and screwed sub-floor on second floor of two-story units.
 - Independent third party review for all structurally engineered elements.
- (ix) Will provide porches on a minimum of 25% of the units.
- (x) Will use at least two different roof lines and two different pitches throughout the project.
- (xi) Project will use a variety of trim and base colors throughout the project.
- (xii) Project shall use consistent detail on all sides of units.
- (xiii) Project will provide false balconies off master bedroom and/or 1'-2' furrout at master bedrooms. Porches will be provided on plans off the rear at family room. Trim and base colors will also conform to this criteria.
- (xiv) Project will install sound insulation board in all units near noise sources.
- (xv) Air conditioning units will be located away from property lines and side yards.
- (xvi) Project shall utilize obscured glass or similar product for bathroom windows.

(p) The Property Owner agrees to provide the following circulation improvements:

- (i) Applicant agrees to install full street improvements in Central Avenue within the project, in addition to 285.91 of full-width improvements along the flea market site at the southwest corner of East Main and Butterfield.

- (ii) Applicant agrees to install full street improvements on East Main Avenue including full sidewalk, curb and gutter extending beyond project boundaries to the existing sidewalk to the west.
- (iii) Applicant agrees to upgrade two existing bus stops to meet the current VTA and ADA standards including, but not limited to, sites along East Main and Central Avenues and agrees to install two (2) reinforced bus pads on the south side of East Main Avenue across from project frontage.
- (iv) Applicant agrees to provide on-site walkways.
- (v) Overall street layout for entire project will provide for the future extension of a street to the easterly project boundary.
- (vi) Project will eliminate multiple existing street stubs along project boundaries.
- (vii) Project will construct full street improvements across East Central Avenue frontage.
- (viii) Project shall provide a minimum 20-foot clear view back-out distance between the garage and travel way.
- (ix) The proposed access points to the project shall provide adequate circulation for emergency response and police patrol.
- (x) Applicant shall be responsible to install additional 72 feet of public improvements on East Main Avenue in addition to the 285.91 feet of public improvements on the East Main Avenue frontage at the flea market.

(q) The Property Owner agrees to provide the following Storm Drain improvements:

- (i) Applicant agrees to pay \$1000/unit to off-site storm drain fund.
- (ii) Applicant agrees to pay \$1000/unit to Capital Improvement Program fund.
- (iii) Project will be utilizing Central Park project's detention pond for storm drainage.
- (iv) All storm drain lines are within the paved area of the street.
- (v) Project will install a 10" water main in Serene Drive.
- (vi) Project will install full street improvements on Central Avenue, in addition to 285.91 feet of full-width improvements along the flea market site at the southwest corner of East Main and Butterfield.

(r) The Property Owner agrees to provide the following park and recreation improvements:

- (i) Applicant shall dedicate a minimum of .86 acres of park space.
- (ii) All parks and open space areas will be maintained through a Home Owners Association.
- (iii) Passive recreation area, 2 tot lots, and 1 basketball/sports court will be provided within the park and open space area.
- (iv) Pathways shall be provided which link park and open space areas.
- (v) Will pay double in lieu parks fees.

(s) The Property Owner agrees to provide the following lot layout and orientation improvements:

- (i) A minimum five-foot front setback variation shall be provided between the single-family dwellings, and four-foot front setback variation shall be provided between the adjoining units.
- (ii) A minimum five-foot rear setback variation shall be provided for the single family dwellings, and four-foot rear setback variation shall be provided for multi-family dwelling per the criteria.
- (iii) Project shall provide variation is garage placement and provide tandem garages.
- (iv) Sound insulation shall be provided and AC units will be located away from property lines.

(t) The Property Owner agrees to provide the following natural and environmental features:

- (i) Fill and excavations shall be less than three feet.
- (ii) All roads shall follow the existing and natural topography.
- (iii) Site plan shall preserve mature trees where possible.
- (iv) The project shall use a design and layout technique that gives individuals maximum privacy within and outside the home.
- (v) Site design shall protect current agricultural lands.
- (vi) Project shall arrange buildings, access-ways and locate open space to eliminate the need for sound walls.
- (vii) Drywall is to be source separated and recycled. Cardboard containers and boxes will be source separated and recycled.

(u) Water mains either new or existing shall be gridded from Central Ave. to Morgan Hill Business Park.

(v) The Property Owner shall record constructive notice on the Final Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement, which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time

a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraphs 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d),

provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement, which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments

awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill: Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

With a copy to: City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Property Owner: Warmington Homes
3160 Crow Canyon Place, Ste 200
San Ramon, CA 94583

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefor, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing

of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

HELENE LEICHTER, City Attorney

J. EDWARD TEWES, City Manager

Attest:

IRMA TORREZ, City Clerk

PROPERTY OWNER(S)

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MP-02-19

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

EXHIBIT "B"

**DEVELOPMENT SCHEDULE MP-02-19: E. CENTRAL – WARMINGTON (SOUTH)
PHASE 4: FY 2004-05 (14 allocations), FY 2005-06 (12 allocations)**

I.	SUBDIVISION APPLICATION	
	Application Filed:	11-17-03
II.	SITE REVIEW APPLICATION	
	Application Filed:	9-30-03
III.	FINAL MAP SUBMITTAL	
	Map, Improvements Agreement and Bonds:	1-28-04
IV.	BUILDING PERMIT SUBMITTAL	
	<u>FY 2004-05:</u> Submit plans to Building Division for plan check:	9-30-04
	<u>FY 2005-06:</u> Submit plans to Building Division for plan check:	3-31-05
V.	OBTAIN BUILDING PERMITS	
	<u>FY 2004-05:</u>	
	Obtain building permits:	12-30-04
	Commence Construction:	12-30-05
	<u>FY 2005-06:</u>	
	Obtain building permits:	6-30-05
	Commence Construction:	6-30-06

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 50 percent of the dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"

LEGAL DESCRIPTION

MP-02-19: E. CENTRAL - WARMINGTON PHASE 4 (SOUTH)

REAL PROPERTY in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

Lot 5, as shown on that certain Map entitled, "Map of the Old Homestead Tract," which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on June 16, 1913, in Book "O" of Maps page 39.

Excepting therefrom that portion thereof described as follows:

Beginning at the corner common to Lots 5 and 8 in the center line of Main Avenue, as shown on said Map and running thence along said center line North 45° 23' East 80.00 feet; thence parallel to the line between Lots 5 and 8, North 44° 37' West 143.00 feet to a 1" pipe; thence South 45° 23' West 80.00 feet to an iron pipe in the line common to Lots 5 and 8; thence along said line South 44° 37' East 143.00 feet to the point of beginning.

APN: 726-20-003

ARB: 727-7-2



CITY COUNCIL STAFF REPORT

MEETING DATE: *March 17, 2004*

Agenda Item # 22

Prepared By:

Senior Planner

Approved By:

**Director of Community
Development**

Submitted By:

City Manager

ZONING AMENDMENT ZA-03-08/DEVELOPMENT

AGREEMENT, DA-03-04: BARRETT-DITRI

RECOMMENDED ACTION(S):

1. Open/close Public Hearing
2. Approve Mitigated Negative Declaration
3. Waive the First and Second Reading of Zoning Amendment Ordinance
4. Introduce Zoning Amendment Ordinance
5. Waive the First and Second Reading of Development Agreement Ordinance
6. Introduce Development Agreement Ordinance

EXECUTIVE SUMMARY: The applicant is requesting approval of a zoning amendment and development agreement for a 16-unit single-family project located on the north side of Barrett Ave., between the Barrett Elementary School and the Jehovah's Witnesses Church.

The project site is currently zoned R-1(7,000). The applicant is requesting approval for a Residential Planned Development (RPD) overlay zone to allow flexibility in the development standards and to adopt a precise development plan for the site. Specifically, the applicant is requesting RPD approval for a 1 ft. reduction from the minimum lot depth (85ft.) for the duet lots 1 & 2, 15 & 16. The City's RPD ordinance allows for flexibility and variations from the underlying zoning district standards when the proposed development enhances the area by exceptional design and arrangement of buildings, provision of open space and landscaping, protection of the welfare and privacy of adjoining property, or construction and reservation of housing units for lower income or senior households.

The project includes a 27,196 sq. ft. park area which includes the project's on-site storm water detention pond. Amenities proposed within the park area include a picnic area, a full size sports court and a private access gate leading to the adjacent elementary school. Four lots will be developed with attached units of 1,623 sq. ft. in size, and four lots will be sold for custom home development and eight developed with homes of approximately 2,400-3,200 sq. ft. in size. The proposed RPD plan is consistent with the purpose of the RPD ordinance and is recommended for Council approval.

The project development agreement formalizes the commitments made during the Measure P process and establishes the development schedule for the project. The project specific commitments are identified in Paragraph 14 of the development agreement, and the development schedule is contained in Exhibit B. The proposed 16-unit project competed in the 2002 small project competition and received 6 allocations for FY 2004-05 and 9 for FY 2005-06. Due to the presence of two existing homes on the property, the Commission asked that the each existing unit be verified as a habitable dwelling unit and if habitable, reconstruct each of the units as replacement units within the project. Replacing two existing units would allow the number of allocations needed for FY 2005-2006 to be reduced to 8.

The Commission reviewed the applicant's request at the February 24 meeting. The Commission voted 5-1 to recommend approval of the zoning amendment and development agreement. A copy of the February 24 staff report and minutes are attached for the Council's reference. A copy of the project mitigations and initial study are available upon request.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing these applications.

ORDINANCE NO. _____, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MORGAN HILL APPROVING A
RESIDENTIAL PLANNED DEVELOPMENT AND
PRECISE DEVELOPMENT PLAN FOR A 16-UNIT
SINGLE-FAMILY PROJECT LOCATED ON THE
NORTH SIDE OF BARRETT AVE., APPROXIMATELY
70 FT. WEST OF HIGHWAY 101. (APN 817-10- 002)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN AS FOLLOWS:**

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- SECTION 4.** The City Council finds that the proposed RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 5.** The City Council hereby approves a precise development plan as contained in that certain series of documents date stamped September 5, 2004, on file in the Community Development Department, entitled “Barrett Place” prepared by M.H. Engineering and Development Process Consultants. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.
- SECTION 6.** Any building additions within this RPD shall be subject to compliance with the base R-1 7,000 site development standards as contained in section 18.12 as amended in the Morgan Hill Municipal Code.

SECTION 7. The project shall comply with the provisions of Ordinance No. 1641 for the modified setback dwellings.

SECTION 8. The City Zoning Map shall be amended as shown in attached Exhibit B.

SECTION 9. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 10. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 17th Day of March 2004, and was finally adopted at a regular meeting of said Council on the 7th Day of April 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7th Day of April 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

ORDINANCE NO. _____, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MORGAN HILL APPROVING A
DEVELOPMENT AGREEMENT FOR APPLICATION
MP-02-20: BARRETT-DITRI (APN 817-10- 002)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.380 of the Municipal Code and Resolution Nos. 03-17c, adopted May 27, 2003, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-20: Barrett-Ditri	6 units (Fiscal Year 2004-05)
	8 or 9 units* (Fiscal Year 2005-06)

*Subject to the determination that the second existing building on the site is habitable.

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 17th Day of March 2004, and was finally adopted at a regular meeting of said Council on the 7th Day of April 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7th Day of April 2004.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 6103

Recorded at the request of
and when recorded mail to:

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2004, by and between **Mr. Dan Ditri**, under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

- A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;
- B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;
- C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;
- D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);
- E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement

F. On _____, 2004, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on _____, 2004.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

(a) "City" is the City of Morgan Hill.

(b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.

(c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.

(d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

Exhibit "A" - Development Allotment Evaluation

Exhibit "B" - Development Review and Approval Schedule

Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On May 27, 2003, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-02-20: Barrett-Ditri, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of eight single family homes and two duets and the creation of four custom lots as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single Family Medium and zoning classification of R-1 7,000/RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

- (d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

- (g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

- (h) Property Owner agrees to include the following **safety** features in the development:

- (i) Fire escape ladders for each upper floor bedroom.
- (ii) One mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 s.f. of floor space, plus one a fire extinguisher for each additional 1,500 s.f. of floor space.
- (iii) Outdoor lighting to meet all police department specifications.
- (iv) Illuminated address numbers for each unit, and where possible painted curb numbers.
- (iv) Use noncombustible siding materials on at least 50% of the units within the project, and the amount will be at least 50% of the individuals units.
- (iv) Installation of intrusion and fire alarm systems, monitored by a central station and which meet the City Ordinance.
- (v) Automatic earthquake shut off valves will be installed for all gas services.

(i) Property Owner agrees to include the following **open space and landscape** improvements in the development:

- (i) Provide 24" box trees as specified (minimum 9' tall and spread of 3-4 feet) in this Criteria at the rate of one box sized tree per ten trees. This will be in addition to the street trees.
- (ii) All existing significant trees shall be preserved unless determined otherwise by a certified arborist. All grading and construction plans within 10 ft. of a drip line of a significant tree shall be reviewed by a certified arborist. All mitigations and preservation techniques recommend by the arborist shall be incorporated into the grading and construction plans.
- (iii) A variety of front yard landscaping, will be provided by the developer
- (iv) Deciduous trees will be planted along south facing sides of homes to conserve energy and provide shade in summer and maximum solar gain in the winter.
- (v) Provide 24 inch box street trees, from the City approved list, at the rate of two trees per interior lot and three trees per corner lot.
- (vi) Drought tolerant grasses will be used for lawn areas and no more than 25% of the landscape area will be covered with lawn. This is exclusive of area within the common area parks.
- (vii) Automatic irrigation systems will be installed which utilize separate valves and circuits for trees; shrubs and groundcovers; and lawn areas. A minimum of three separate valves will be provided.
- (iix) At least 15% of the landscaped area is hardscape of one form or another, not including walkways
- (ix) At least 50% of all plant material will be from the Selected Plant List, Appendix A of the City Water Conservation Landscape Guide.
- (x) Landscaping will be installed on all areas visible from public and private rights-of-way
- (xi) All significant trees shall be preserved unless certified arborist deems a tree not worthy saving due to existing declining health.
- (xii) If the proposed gate house is not approved by the MHUSD, an alternative improvement shall be approved by the Community Development Department.

(j) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.

(k) Property Owner agrees to purchase transferable development credits (TDC's), at the rate of one TDC per 25 units (subject to future change in the TDC requirement).

Payment of the TDCs shall be collected on a per unit basis at time of building permit issuance. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

development: (l) Property Owner agrees to include the following **housing features** in the

- (i) Two duets (four units) of approximately 1623 sq. ft. in size shall be provided as moderate units.

*The final sales price (at close of escrow) for the four moderate rate units will be based on HUD income limits for a family of 4 at the closing date.

- (ii) Lots 9,10 & 11 shall be limited to single story homes.
- (iii) Moderate rate attached units shall comply with Ordinance No. 1641 for modified setback dwellings.
- (iv) Pay double the Standard Housing Mitigation fees.
- (v) Front yard setbacks shall vary by a minimum of 5 ft.
- (vi) Rear yard setback shall vary by a minimum of 5 ft.
- (vii) Lots 2, 7, 8 & 16 shall have a side loading garages. Custom lots 9&10 shall provide a side loading or a detached rear garage.
- (viii) All single family detached development shall conform to the R-1 7,000 development standards. The project duet units do not need to meet the 12.5' second story setback requirement.

development: (m) Property Owner agrees to include the following **construction** features in the

- (i) Install "Energy Star" labeled windows, with low-e coating, including vinyl frames,
- (ii) High efficiency gas furnaces of 90% efficiency or greater in each unit. The 15% reduction will be verified with plan submittal for building permit. Test results will be provided on the job to verify that the 15% reduction in energy use has been met, and any additional required steps necessary to meet this commitment will be taken during construction.
- (iii) Two separately zoned high-efficiency heating systems in all plans over 3000 s.f. and in two story homes less than 3000 s.f. where floor plans will permit.
- (iv) Provide high efficiency air conditioning unit with a SEER rating of 12 or higher in all units.
- (v) Automatic thermostatically controlled attic exhaust fans which will reduce air conditioning energy costs.
- (vi) Recirculating hot water system, with demand pumping, in each unit.
- (vii) Installation of cast-iron drainage pipes and piping insulation between floors for sound reduction.
- (iix) Future ready wiring , including RJ6 wiring and outlets and CAT5R cable, with home runs from all habitable rooms to the main phone box.
- (ix) Class A roof covering,

- (x) TJ floor joists instead of dimensional lumber which causes floor squeaks.
- (xi) Gas line (with 220 volt electrical outlets) will be provided for laundry rooms.
- (xii) Balconies on a minimum of 25% of all developer built units which can be viewed from the public right-of-way.
- (xii) A consistent level of architectural relief shall be present on all sides of the building.
- (xiv) Material uses on the front elevations will wrap on all 4 sides of the unit along with window trim and window designs.
- (xv) Houses will be plumbed for future soft water installation
- (xvi) Drywall will be source separated and recycled.
- (xvii) Cardboard containers and boxes will be source separated and recycled.
- (xviii) A minimum of nine distinctly different color pallets with 3 colors each.

- improvements: (n) The Property Owner agrees to provide the following **circulation**
- (i) Developer agrees to install the following off-site pedestrian safety improvements or other needed improvements to be determined the MHUSD and the Morgan Hill Public Works Department up to \$3,000/unit in value:
 - 1. Pedestrian crossing signal at corner of Barrett and Butterfield.
 - 2. Sidewalks along the east side of Juan Hernandez Dr. from Tennant Ave. to Barrett Ave.
 - 3. Side walks along the south side of Barrett Ave.
 - 4. Contribute to the Condit-Main intersection improvements including the street widening for left turn lanes.

- improvements: (o) The Property Owner agrees to provide the following **public facilities**
- (i) All or the project drainage improvements will be consistent with the City's Storm drain system and Storm Drainage Master Plan.
 - (ii) The on-site storm water detention pond shall be size to accommodate the project and the adjacent parcel to the east.
 - (iii) Construct a standard cul-de-sac with curb gutter and sidewalk at the terminus of Barrett.
 - (iv) Construct a sidewalk along the east side of Juan Hernandez Dr from the Acute Care Center to Barrett Ave.
 - (v) Contribute an additional \$2,000/unit for traffic signal improvements completed at the Juan Hernandez/Tennant Ave. intersection or future signal at Butterfield and Tennant Ave.
 - (vii) Contribute \$1,000 per unit to the Capital Improvements Program.

(p) The Property Owner agrees to provide the following **parks and path** improvements:

- (i) Private open space/park area shall be maintained by a neighborhood homeowners association.
- (ii) Private park area to include tree grove, a picnic/BBQ area, turf area and full size sport court. The park area shall also include a private “gate house” allowing access to the adjacent elementary school site. The installation and operation of the “gate-house” shall be to the approval of the Morgan Hill Unified School District.
- (iii) Private pathways leading through the park shall be installed by the developer.
- (iv) Construct a bike lane on Barrett Ave. frontage per the Bikeways Master Plan.
- (v) Pay double the required in lieu park fees.
- (vi) The landscape area provided on the east side of the noise barrier shall be maintained by a neighborhood homeowners association.
- (vii) Any alteration or substitution of the park amenities shall be reviewed and approved by the Planning Commission and City Council.

(q) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(r) The project shall provide the following information, by address for each unit, to the Community Development Department:

- (i) Date of sale
- (ii) The number of bedrooms
- (iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

(s) All sound wall, off-site and park improvements will be installed with the first (6 units) phase of the project.

(t) The Property Owner agrees to the following conditions for the development of the four custom lots within the project.

- (i) The project developer shall not place any private agreements/contingencies on any of the “For Sale” lot (such as requiring the buyer to use the project developer to construct the home). The project developer may through CC&R’s or deed restriction, establish a minimum

square footage of building area for the custom lot and/or establish minimum architectural standards to ensure compatibility with the project developer-built homes in the subdivision.

- (ii) Designated “For Sale” lots may be sold to other development entities, such as a general contractor specializing in custom home construction. Sales to other development entities (any one developer) shall not exceed the greater of two units or 25 percent of the designated “For Sale” lots. In addition, at least 50 percent of the designated “For Sale” lots must be sold to private individuals. Note: Lots not meeting the above may still be sold for development by others, however, these lots shall not qualify for the two-year extension provided above. Such sales do not relieve the project development entity from all commitments and requirements as outlined above and may increase the risk of not meeting the 50 percent “under construction” for “partially-completed” status. Projects that are not at least 50 percent completed under the original building allotment are not eligible to draw from the partially completed building allotment set-aside.
- (iii) A buyer/owner (private individual) who selects for his or her builder either the project developer or other developer entity under subsection t(ii) above, must take title to the property and pull a building permit in his or her own name (as the owner/builder).
- (iv) The two-year extension date for custom lot development would be maintained as long as the conditions above are met. If the project developer receives an extension from the City Council for a project phase, all “For Sale” lots in the corresponding phase of the project would also be extended. If the project developer does not receive an extension for a project phase for a “For Sale” lot, the individual owner/developer of that lot may apply for a one year extension. If the “For Sale” lot owner is unable to meet the commencement of construction threshold by the end of the one year extension, the “For Sale” lot owner would still be eligible to compete in the partially completed set-aside category, provided the overall project has satisfied the requirement for “partially complete” status under current City Council policy.
- (vi) Construction of the custom lots must commence within two years of the expiration date of the project’s 2005-2006 fiscal year building allotment. If construction fails to commence within the two-year period, a building allotment must be obtained from the partially completed set-aside on any home constructed the custom lots within the tract.

15. Effect of Agreement on Land Use Regulations.

- (a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and

construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the

time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill: Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

With a copy to: City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Property Owner: Mr. Dan Ditri
915 Troy Ct.
Sunnyvale, CA 94087

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefor, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

HELENE LEICHTER, City Attorney

J. EDWARD TEWES, City Manager

Attest:

IRMA TORREZ, City Clerk

PROPERTYOWNER(S)

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MP-02-20: Barrett-Ditri

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

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EXHIBIT "B"

**DEVELOPMENT SCHEDULE MP-02-20: Barrett-Ditri
FY 2004-05 (6 allocations), FY 2005-06 (8 or 9 allocations*)**

*Subject to the determination that the second existing building on the site is a habitable dwelling unit.

I.	SUBDIVISION AND ZONING APPLICATIONS	
	Applications Filed:	6-26-03
II.	SITE REVIEW APPLICATION	
	Application Filed:	4-30-04
III.	FINAL MAP SUBMITTAL	
	Map, Improvements Agreement and Bonds:	3-31-04
IV.	BUILDING PERMIT SUBMITTAL	
	<u>FY 2004-05:</u> Submit plans to Building Division for plan check:	6-30-04
	<u>FY 2005-06:</u> Submit plans to Building Division for plan check:	3-31-05
V.	BUILDING PERMITS	
	<u>FY 2004-05:</u>	
	Obtain Building Permits:	9-30-04
	Commence Construction:	6-30-05
	<u>FY 2005-06:</u>	
	Obtain Building Permits:	6-30-05
	Commence Construction:	6-30-06

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 8 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"

LEGAL DESCRIPTION

MP- 02-20: Barrett-Ditri

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

PORTION OF LOT 13, as shown on that certain Map entitled, "Catherine Dunne Ranch Map No. 7", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on March 5, 1906 in Book "L" of Maps, at Page 26, and more particularly described as follows:

BEGINNING at a point in the center line of Barrett Avenue, at the corner common to Lots 13, 14, 25, and 26, as said avenue and lots are shown upon the Map above referred to; running thence Northwesterly and along the dividing line between Lots 13 and 14, 825.00 feet to the westernmost corner of said Lot 13; thence Northeasterly and along the Northwesterly line of said Lot 13, 276.50 feet; thence Southeasterly and parallel with the Southwesterly line of said Lot 14, 825.00 feet to the center line of said Barrett Avenue; thence Southwesterly and along the center line of said Barrett Avenue, 276.50 feet to the Point of Beginning

EXCEPTING THEREFROM the following described parcel of land thereof:

BEGINNING at a point in the Southerly line of Lot 13, being also in the center line of Barrett Avenue, distant thereon Easterly 264.00 feet from the common corner to Lots 13, 14, 25 and 26; and thence along said Southerly line, N. 64° 31' E. 12.50 feet to a point; thence parallel to the easterly line of said lot 13, N. 25° 29' W. 825.00 feet to an iron pipe in the Northerly line of said Lot 13 (at 29.70 feet on the course is an iron pipe in the Northerly line of Barrett Avenue); thence along said Northerly line of Lot 13, S. 64° 31' W. 12.50 feet to a point; thence parallel to the Easterly line of said Lot 13, S. 29' E. 825.00 feet to the True Point of Beginning.

APN 817-10-002



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2004

Agenda Item # 23

Prepared By:

Deputy Director PW

Approved By:

Department Director

Submitted By:

City Manager

REVIEW OF VTA'S VTP 2030 PROJECT LIST

RECOMMENDED ACTION: Review attached proposed VTA VTP 2030 program area lists for impact to the City of Morgan Hill.

EXECUTIVE SUMMARY: The Valley Transportation Authority (VTA), which has been designated the Congestion Management Agency for Santa Clara County, is currently updating the Valley Transportation Plan (VTP) 2020. The update will be called VTP 2030 and will become the blueprint for long-range transportation planning and funding prioritization for the County's federal and state discretionary funds.

The wide variety of transportation projects in VTP 2030 are contained in the program area project lists that the VTA Board of Directors are now considering. The program area project lists are broken down into several categories which are described in the attached VTA Board January 30, 2004 meeting agenda. The categories are Transit, Freeway/Highways, Expressways, Local Streets and County Roads (LS&CR), Intelligent Transportation Systems (ITS), Bicycle, Sound Mitigation, Landscape and Graffiti Removal, Pavement Management, and Livable Communities. The City of Morgan Hill has projects listed in three of the categories, and could participate in two others.

In the LS&CR category, the Butterfield Blvd. extension from Tennant Ave. to Watsonville Rd. is listed and ranked No. 24 out of 104 projects. In the ITS category, a city-wide traffic signal upgrade project and a Cochrane Road signal timing project are included. In the Bicycle category, Morgan Hill has the West Little Llagas Creek Trail project from Spring Ave. to Edmundson Ave. in the Tier 1 list of projects. Staff is now preparing project applications for the Tier 2 list which will focus on completing the West Little Llagas trail system from Ciolino to Silvera Park. The City will be given an opportunity to participate in the Pavement Management and Livable Communities categories at such time that VTA calls for projects in those categories.

The VTA Board of Directors will be reviewing the proposed project lists at their March and April meetings with a scheduled adoption of the program at its May meeting. In addition, VTA staff is holding public meetings to get input about the proposed program from residents of the County. One of those meetings was held in Morgan Hill at the Council chambers on Thursday March 11, 2004.

FISCAL IMPACT: There is no fiscal impact with this action.



CITY COUNCIL STAFF REPORT

MEETING DATE: MARCH 17, 2004

Agenda Item # 24

Prepared By:

**Manager, Recreation &
Community Services**

Submitted By:

City Manager

COUNCIL CONSIDERATION OF COMMERCIAL RECREATION OPERATORS AT THE SPORTS COMPLEX

RECOMMENDED ACTION(S): Provide direction to the Parks and Recreation Commission if they should consider as an option commercial recreation operators at the sports complex.

EXECUTIVE SUMMARY:

The City Council has directed the Parks and Recreation Commission to review the conceptual plans completed in January 2002 for the sports complex and develop a proposal for Council consideration as to how to proceed with the project. The project is listed in the Capital Improvement Project budget with \$2.4 million for interim improvements. The estimated cost of the total project as presented in January 2002 was \$12.76m not including the temporary phase or land costs.

The Parks and Recreation Commission has formed a committee consisting of Chair Frederick, Commissioner van Keulen and representatives from local non-profit sport organizations. The committee will form a proposal for the temporary development and interim use of the sports complex once the CYSA lease expires in December 2004.

Meanwhile, the Mayor has been approached by a community member to consider the possibility of the sports complex be operated as a commercial recreation venture with a sports scope. The particular model suggested is the Big League Dreams which develop sports projects that depict replicas of famous major league stadiums with amenities including restaurant facilities. Other businesses offer similar approaches. It is suggested that commercial recreation be one of the opportunities studied by the PRC Committee.

In 2000 the Morgan Hill Youth Sports Association had been approached by Quantum Sports Parks to develop a joint project using City/RDA funds to develop a privately operated sports facility with a regional draw. The project at the time did not develop support due to the cost to community members to use the facility; City/RDA would bear the costs of land (minimum 36 acres) and site improvements; and the Quantum Sports Group would find investors for the project construction. The site in question was the Malaguerra site off of Cochrane. There appears to be a consensus on the financial viability of a regional sport park. The issue is coming up with the right mix of community, local use and regional financial draw.

FISCAL IMPACT: The CIP has budgeted \$2.4m for interim improvements but operations and maintenance funding has not been budgeted at this time.



CITY COUNCIL STAFF REPORT

MEETING DATE March 17, 2004

Agenda Item # 25

Prepared By:

Senior Planner

Approved By:

**Director of Community
Development**

Submitted By:

City Manager

CONTRACT AMENDMENT FOR RRM DESIGN GROUP

RECOMMENDED ACTION(S):

1. Approve the appropriation of \$11,000 from the Community Development Fund Balance (206) to fund unanticipated costs associated with the consulting service.
2. Authorize the City Manager to execute an amended consultant services agreement with the final form as approved by the City Attorney, for contract consultant services with RRM Design Group at a cost not to exceed \$61,000.

EXECUTIVE SUMMARY:

The RRM Design Group was hired to do an update of the City's Design Review Ordinance, Architectural Review Handbook and the establishment of Design Guidelines for the gateway areas within the City. In December 2001 the Council approved a contract for \$50,000 with RRM Design Group. A draft copy of the draft handbook document has been distributed to the Architectural Review Board for review. The Board is scheduled to hold a workshop with RRM on April 1.

Prior to the completion of the draft document, significant changes had to occur within the preliminary drafts. The consultant began preparing an initial document based on direction from the January 2002 Council/Commission/Board workshop. After the Board's preliminary review of the document in March 2003, the consultant was asked by the Board to pursue a very different direction with the handbook document. In June 2003, the City Council was asked by staff to confirm direction on the Architectural Review Handbook. The direction given by Council was different from the direction given to the consultant by the Board in March. The change in direction has caused the consultant to incur additional costs in preparing the document. Additional money is also needed to cover the costs of the Commission/Council workshop tentatively scheduled for May. A copy of the "add service" document detailing the additional costs is attached for the Council's review. To complete the update process, the amount of the original contract will need to increase \$10,200. Staff is recommending the contract amount be increased by \$11,000 to cover any other unanticipated miscellaneous costs.

Staff is requesting the City Council Authorize the City Manager to execute an amended contract with RRM in the amount of \$61,000.

FISCAL IMPACT: The cost of the Handbook/Ordinance has been paid through the Planning Division Contract Services (206-5120-42231). The \$11,000 increase amount will be split between the Community Development Fund \$7,700 (70%), RDA \$2,200 (20%) and the Housing Fund \$1,100 (10%).



CITY COUNCIL/REDEVELOPMENT
AGENCY MEETING DATE: *March 17, 2004*

Agenda Item # 26

Approved By:

BAHS Director

Submitted By:

Executive Director

**LOAN FOR OFF-SITE IMPROVEMENTS FOR DAY
WORKER CENTER**

RECOMMENDED ACTION(S): Consider request from Weston Miles Architects to modify the terms of their loan.

EXECUTIVE SUMMARY: On February 18, 2004, the City Council/Redevelopment Agency approved a loan to Weston-Miles Architects (WMA) to fund the off-site improvements for the Day Worker Center. The off-site improvements include curb, sidewalk, gutter, street improvements, lighting, engineering and inspection fees, water and sewer improvements, and utility undergrounding in-lieu fees. The loan was in an amount not-to-exceed \$180,000.

At the meeting, the Agency discussed the merits of the loan and the need to keep the loan short term so as to recycle the funds and encourage the permanent development of the site. WMA had initially requested a 10 year loan with the first 5 years deferred with fully amortized payments beginning in year 5 or that the loan is due when they pull building permits for the permanent development of the site, whichever is earlier. Staff had initially proposed a 5 year loan term or when they pull building permits, whichever is sooner. As a compromise, staff had suggested a 7 year term. During the meeting, the Agency stated they had concerns about having a longer loan term than 5 years. After much Agency discussion, a representative of WMA indicated they would be willing to accept the 5 year term or when WMA pulls building permits for the permanent development of the property, whichever is sooner. The Agency indicated this was acceptable and approved the loan with the 5 year term.

Since the February 18th meeting, WMA has re-thought their position and is requesting the Agency to reconsider the loan term (see the attached letter) as they find it is not a "...kind of loan that we can work with." Staff believes WMA agreed to the 5 year loan term, but we are seeking direction from the Agency on this matter.

FISCAL IMPACT: A longer loan term would mean the funds would not be available for other projects for two additional years.